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# FINANCING THE WAR

## The Annals

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E. M. PATTERSON



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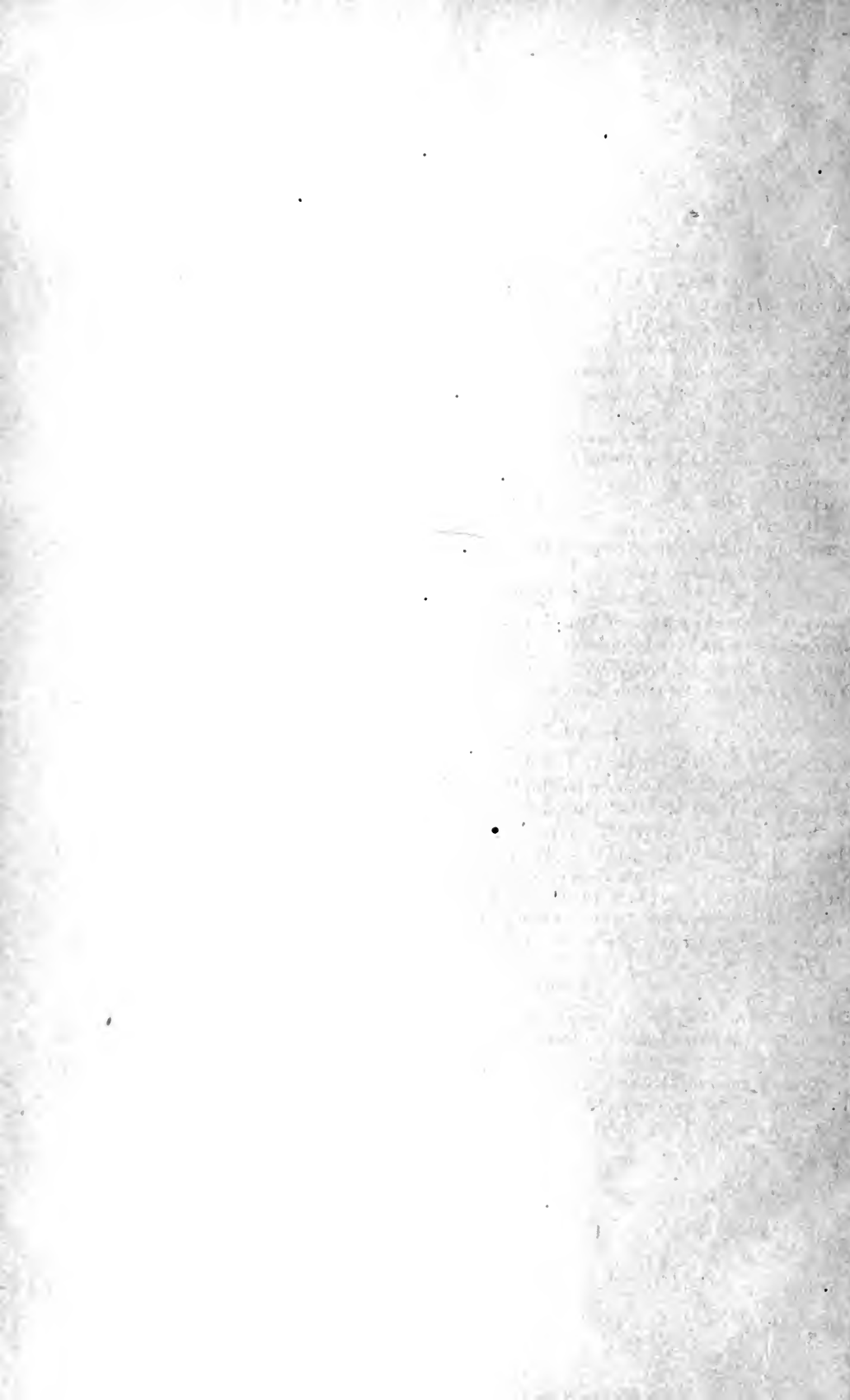
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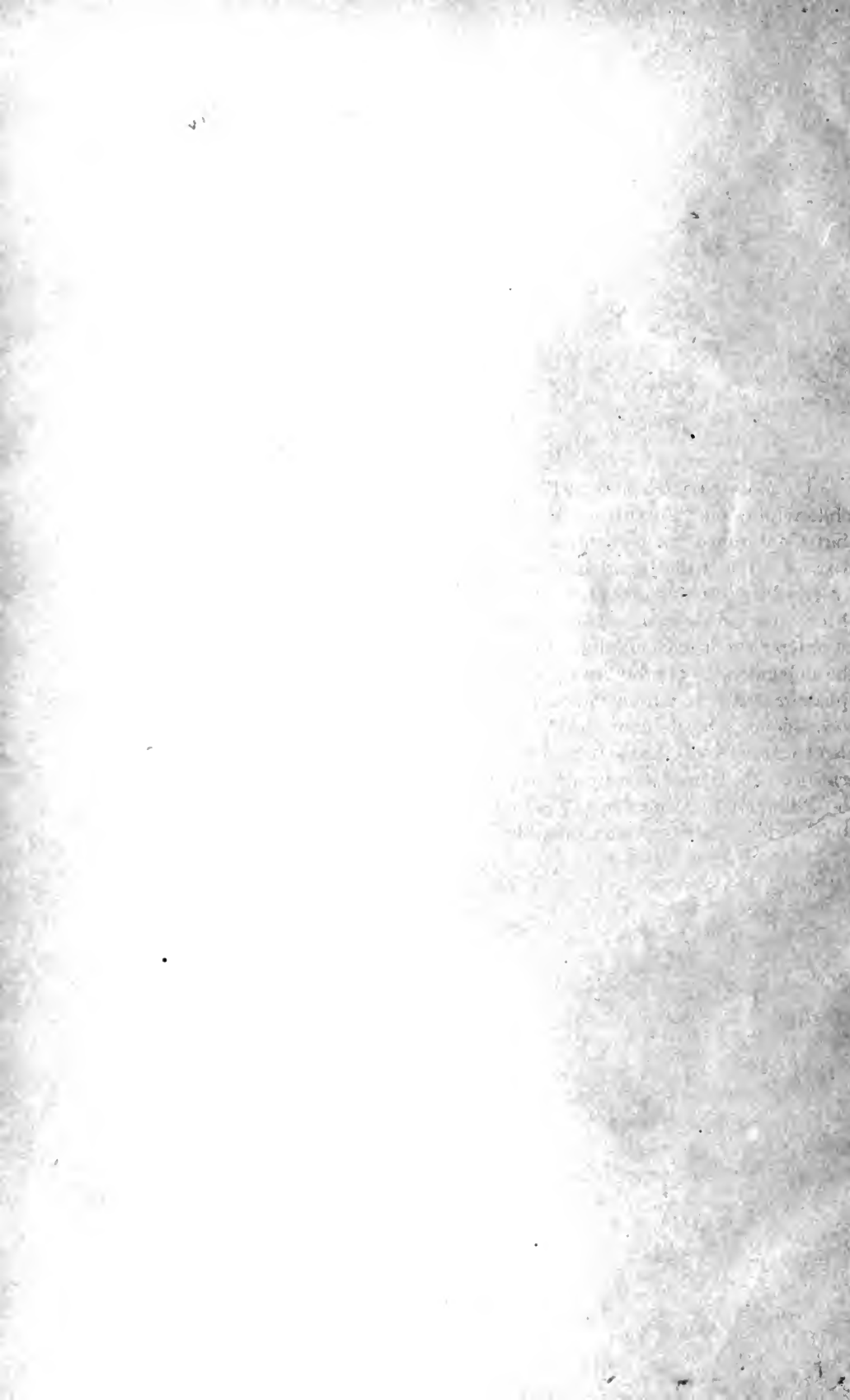
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## FOREWORD

On November 2 and 3, 1917, the Academy held a Conference in Philadelphia on "Financing the War" and the leading addresses of that Conference are presented as the articles in this issue of *The Annals*. The widespread interest in this meeting was evidenced by the large attendance and also by the appointment of nearly three hundred delegates from states, tax associations, chambers of commerce, colleges and universities and other organizations. To the delegates, to the bodies appointing them and especially to the speakers, many of whom came from a long distance and at much inconvenience, the debt of the Academy is great. Thanks are due also to many individuals in and about Philadelphia for their cooperation. Particular mention should be made of the helpfulness of the Philadelphia Chamber of Commerce and its officials who aided the Academy in every way possible.



## THE FINANCIAL SITUATION: A GENERAL SURVEY

BY F. W. TAUNTON,

Chairman, United States Tariff Commission.

Let me begin with a sketch in broad outline of the general situation, a survey of the expenditures which we shall have to face, of our available resources, the prospects for the immediate future and for the more distant future. Nothing more than an approximation to accuracy is now possible, but we can reach an approximation sufficient for an understanding of the tasks and burdens which confront us.

In round numbers, the total appropriations which Congress has made for the fiscal year 1917-1918 come to nineteen billions of dollars. In some of the formal statements the total seems to be much less—no more than twelve billions. But this smaller sum includes only those expenditures which are directly and strictly our own and does not include loans to the allies which are expected to amount to some seven billions of dollars. It has been officially stated that up to October 1 these loans amounted to something over two billions of dollars; we are told to expect five billions more, of a total of seven billions.

### THE AMOUNT OF FUNDS PROVIDED

Against this imposing sum of nineteen billions we have now provided, or undertaken to provide, perhaps eleven billions. The liberty bonds of the first issue produced two billions. Those of the second issue are expected to provide not less than three, nor more than five billions, and have in fact yielded \$4,617,522,300. The total tax revenue, under the provisions of law in effect before the beginning of this year's special session of Congress, amounted to one and one-third billions. The additional revenue under the war revenue act which became law on the third of October is expected to be two and a half billions. In all, therefore, we have provided for something over four billions by taxation and five or seven billions by loans. These are stupendous sums, but nowadays we have to put our figures in terms of billions, no longer in

terms of millions. The warfare of our time is on a stupendous scale and calls for stupendous expenditures.

Some of the items mentioned in this summary call for comment. Our loans to the allies are not always figured as expenses or charges. As I have just stated, they do not figure in our official statements of appropriations. And in a sense they are not expenditures of our own and call for no appropriations of our own. They are loans for which we get a *quid pro quo* in the form of promises to pay from the allied governments; and ultimately these obligations will be repaid. But for the time being the transactions mean a charge of our own, to be met from our own resources. During the continuance of the war and for such period after its close as we may still be extending aid to our allies, we must raise these sums by taxation or by loans and must face them as an immediate drain upon our present resources.

Another item which calls for comment is the revenue to be derived from the War Tax Act, expected to amount to two and one-half billions. Will it be just so much, or will it be more or less? On this topic we must speak with reserve. The amount which will be procured from some of the new tax levies is open to speculation; particularly as regards the one item which bulks largest in the act, namely, the excess profits tax. It remains to be seen what will be the final accruing revenue under this tax and under the others newly levied. But even a considerable margin of error due to such uncertainties will not seriously affect the general situation. The tax revenue under the act may amount to a few hundred millions more or a few hundred millions less than was anticipated. But as we know too well, a few hundred millions figure very little in these days; we frequently pay out sums of this amount over night in loans to our allies.

Whatever sort of calculation we make, one thing is clear, namely, that the revenue resources so far provided will not suffice for the presumable expenditures of the fiscal year 1917-1918. We have provided ten or eleven billions; we have appropriated nineteen billions. The expenditures may be somewhat greater than the appropriations, may be somewhat less; but it would seem to be certain that they will be greater than the revenue already provided. Before the fiscal year closes we shall have to consider further loans or further taxes. How far are we prepared to meet this impending

obligation? How far are we in a position to provide for so vast a drain upon our financial and economic resources? The prospect is not to be faced with a light heart. And yet I think it is one which can be faced with a stout heart. We have undertaken an enormous task, but fortunately we have enormous resources, and perhaps, even more to our good fortune, we have a mechanism better adapted to the task than the country ever before has had in similar exigencies.

### CIVIL WAR EXPERIENCE

Let us contrast the present situation for a moment with the emergency which confronted the nation in its last hour of supreme peril. The drain upon our resources during the Civil War is comparable to that which we must now face. Small as the millions of those days seem as compared with our billions, they loomed up large in the imagination of the men of fifty years ago and caused doubts and tremors such as are in evidence at the present time. Contrast now the situation at the outset of the Civil War and the experience of that time, with our own present prospects.

Without entering into anything in the nature even of a sketch of the earlier conditions, let me remind you of two striking episodes in the financial history of the Civil War. One was the dislocation, indeed the breakdown, of the country's banking machinery on the very first occasion of its use. The initial loan of the Civil War, the \$150,000,000 of 6 per cent put out in 1861, was attempted to be marketed through advances from the banks of the North and through the eventual sale of these bonds on their part. It led within a few months to the suspension of specie payments by the banks; and the suspension of specie payments in those days meant suspension of all payments—virtual insolvency. Great as was the desire of the financial community, then as now, to come to the support of the government, the strain on the unorganised banks of those days was found to be too great at the very first trial. The banking machinery of the country proved quite unequal to lending adequate support to the government.

The second episode to which I will call your attention was the natural corollary from the first: the early resort to paper money and the early depreciation of the paper money. Inconvertible paper was issued at an early stage in the war, and to a greater

and greater extent as the war proceeded. How great was the disturbance of our monetary and industrial conditions because of the inflation of the war need not again be rehearsed. All students of the period know the evils which resulted for the community, and know too how vain was the effort of the government to meet its financial obligations by this means. Toward the close of the war it led to something like financial collapse, and the historian is tempted to speculate on the depths to which we might have fallen if it had been resorted to for a year or two longer.

On the other hand, taxation was resorted to slowly and hesitatingly and did not bring a really effective increase of revenue until the war was nearly over. It was not until the struggle had been going on nearly four years that, during the fiscal year 1864-1865, a great revenue was obtained by taxation. And the taxation of those days was almost exclusively indirect taxation, in the way of import duties and complicated excises, with unexpected and disturbing effects on the industries of the country at large.

#### PRESENT FACILITIES

Comparing now the unfortunate experiences of the past with the present situation and the present prospects, we find much that may lead us to take heart. We may not be prepared as adequately as we should be; but we are not entirely unprepared.

First of all, we have the federal reserve system. The government has at its disposal a great unified banking system which at once automatically utilizes the credit facilities of the country for the public service. Temporary loans can be arranged for overnight. Certificates of indebtedness are taken and distributed with the minimum of strain. The flotation and distribution of the long-time securities are effectively aided by the same machinery. The financial community is no less patriotic than it was in 1861, but it is immensely better prepared to act as the Treasury's medium and to come to the Treasury's support. This advantage is nothing less than enormous. It removes the insidious temptation to resort to paper money, and saves the country the subsequent embarrassments and subsequent losses which such resort brought to us during the long period from the close of the Civil War to the resumption of specie payments in 1879, and which it will not fail to bring to the warring countries of the Continent which have been compelled to resort to the same demoralizing device.



I am not unaware that the utilization of our credit machinery by the government, and the extension of deposit credit which it will entail, may have the effect of inflation or something analogous to inflation. But inflation of this sort, in any case not easy to measure quantitatively and perhaps not susceptible of absolute proof, is at all events less dangerous for the future than the resort to fiat money. It is likely to correct itself automatically after the war. So long as specie payments are maintained, this sort of inflation cannot maintain itself permanently when conditions of peaceful commerce again have been restored. The unwelcome effects which it may have for the time being are in their nature transitory. If we maintain specie payments and refrain from resorting to paper money, we are spared such long continuing evils as came in the train of the Civil War issues.

But not only as regards our financial machinery and its utilization, but also as regards our tax system and its utilization are we in a state of preparedness. We have on hand, ready for immediate application, the machinery of the income tax. It is far from perfect; and yet it is immensely serviceable. If it had now to be set up *de novo*, we should have to wait at least a year, probably several years, before anything like the revenue now within our grasp could be obtained from it. It makes possible a resort at once to heavy levies without waiting for the slow process of getting the machinery of taxation in working order.

Moreover the machinery which is available for the administration of the income tax is serviceable also for that of the tax on excess profits. Separate returns are indeed to be called for in order to secure the collection of the latter, but the returns already made in previous years for the income tax will be available for purposes of comparison and correction, and the returns made for the income tax of the current year will be similarly of service. I would not minimize the perplexing problems which the Internal Revenue Bureau will have to solve in the administration of the excess profits tax. But it is no small alleviation that the income tax organization can be utilized without fundamental readjustment.

It is a good general maxim of taxation that any new levy should be initiated at a very moderate rate, and that the machinery of collection should be organized while the rate is still moderate. Of this perhaps no more striking illustration can be found than our

experience with the tax on distilled spirits. We are now levying that tax at the extraordinary rate of \$3.20 per gallon. The attempt to collect a very much smaller tax during the early years of the internal revenue system led to evasion and fraud on a great scale. Gradually the system of collection and supervision has been perfected; and in consequence, a rate of tax which twenty years ago, even ten years ago, would have been deemed quite beyond the possibilities of effective collection, is now imposed with confidence. I would not for a moment pretend that our method of levying the income tax has yet approached a stage of highly perfected adjustment—such a stage as has been reached in Great Britain, for example, only after three-quarters of a century of experience. But the framework is on hand; it has been set up under low rates and therefore under conditions of little strain; it is in working order. We are suddenly increasing the rates of the income tax in such way that the revenue will be at least triple that of the last fiscal year, and six times that of the revenue of any preceding fiscal year. We should not have been able to expand this financial resource had we not already been prepared through the previous establishment of a reasonably effective system.

#### THE REASONS WHY WE ARE PREPARED

It may not be amiss to indicate briefly how we happen to be in a situation so much more promising than ever before in a similar exigency. Partly it may be a matter of great good fortune; but partly it is a matter of deliberate facing of possibilities, a deliberate setting of our house in order, for which our political leaders and the country at large may take some credit. Both parties are entitled to credit for the establishment of the federal reserve system. The preparatory work was done under the administration of President Taft, through the medium of the Monetary Commission then established which evolved the preliminary scheme. The system in its final form was definitively worked out and put into operation under the leadership of the present administration. The income tax again, though not established until 1913, was a foregone conclusion from long continued previous discussion and from the ratification of the constitutional amendment. As regards the immediate resort to heavy taxation, both through the income taxes and the long list of others that figure in the war tax act, something

is due to the preaching of the economists, who, though not perhaps in entire agreement on the precise extent to which resort should be made to taxation, have nevertheless been unanimous in urging immediate substantial levies. Not a little, again, is due to the example of our ally, Great Britain, who has not hesitated to grapple frankly with the financial task, to face the fact that war entails immense financial sacrifices, and to call upon the British community to submit at once to drastic taxation. And finally, not least, much is due to the courageous spirit of our own administration, our Secretary of the Treasury, the leaders of both parties in the House and Senate. Inevitably there have been differences of opinion as to the degree to which taxation should be resorted to, and as to the precise form of loans and credit arrangements. But there has been no hesitation with regard to the need of utilizing at once all the available machinery for procuring huge resources at the earliest opportunity.

#### OUR INDUSTRIAL AND ECONOMIC SITUATION

What can be said now of the economic and industrial situation as contrasted with the strictly financial problems? In the early days of the European War much was said and many calculations were presented about the total resources of the several nations, their total wealth, their total annual income. We were told that Great Britain, France and Germany had so many billions of wealth, and therefore so much which was potentially available for the conduct of the war. It requires no profound analysis to make it clear that figures of this sort signify little. The total resources of a country cannot be poured into the melting pot. Immense parts of them are by their nature unavailable. The land, the houses and buildings, a large part of the factories and workshops, are committed to uses from which they cannot be diverted to war service. I may remark, parenthetically, it is fortunate that this is the case. If it were not, absolutely everything might be poured into the public treasury under the spur of patriotic zeal, and the very last item of wealth and property might be engulfed in the fearful waste of war. The possibilities of eventual recovery are the greater because it is impossible in the nature of things to spend and destroy everything for the purposes of war.

The real problem for war expenditure is this: how much is

there of free resources, how much can now be carved out and made available for military purposes and in what ways can it be made available? Our calculations and speculations should be directed not to the extent of the people's total wealth or total resources, but to the extent of their free and divertible resources and income. This is another way of saying that our attention should be directed to the potential savings, the potential economies, the things that we can do without. How much income in terms of money, and in terms of labor resources and commodity resources purchasable with money, can be not only spared, but made immediately available and put at the disposal of the government during the war?

Here the question at once arises, what are in ordinary times the free resources of the community? What are its ordinary savings? On this subject we are unfortunately but ill-informed and can make nothing more than a guess. The usual or normal fresh savings and fresh investments of the people of the United States are supposed to be somewhere between three to five billions. I make no pretense of certifying to the accuracy of even this rough figure. But whatever be the sum we thus start with, clearly it is no more than suffices for a start. Even if we put at the disposal of the Treasury every cent that we ordinarily put by and save, we do not begin to meet the needs of the present time. We must do much more.

But all experience teaches that under stress of war we can do more, very much more. During the Civil War the North raised by internal loans vastly more than it had ever put into productive enterprise in the years preceding the war. It raised in addition vastly greater sums by taxation than the country had ever before dreamed of raising. I will not say that there are no limits to the sums which can be raised by a combination of loans and taxes, but it is certain that the ordinary savings and the apparent free resources of normal times give no clue to what can be secured under stress of need and under the impulse of patriotic zeal. It may seem now that we have undertaken a formidable task in our first and second liberty loans. So it seemed during the Civil War with that first loan of \$150,000,000, which led, as I have already noted, to the breakdown of our banking machinery. The task seemed even more forbidding when in 1862 the United States resorted to the second great loan—what was then supposed to be the enormous issue of \$500,000,000 of 5-20 bonds. So it has been in the European

countries, where successive loans have met successive response. The initial loans have seemed staggering, and yet successive loans have met successive response and the limit has receded as the stress of need became greater.

What is thus true of the potentialities of loans is true also of the potential tax resources. We have begun at the very outset on a considerable scale, with tax levies heavier than those made by this country in any corresponding stage in previous exigencies, heavier too than those made by any other country at a corresponding stage in the present great conflict. It is not only within the bounds of possibility, it is more than probable, that we shall have to resort to still heavier levies and to levies more widely distributed. Yet here, as with regard to our borrowing capacity, we never know how much we can do until we know what we have to do. Our loans and our taxes already mean that we must begin to restrict and curtail, must learn to dispense with luxuries and comforts, perhaps with some things which we have regarded as necessities. We shall have to proceed further in the same direction. Every community must adjust its industries and its expenditures to the needs of a war through a gradual process. We have entered only on the first stage.

#### SOURCES YET UNUTILIZED

One last aspect of the case I would bring to your attention. How far are there resources which as yet we have not tapped? How far are there spare fractions of income not ordinarily reached either by any process of direct taxation or by any process of habitual saving and investment? In this country we have a great mass of prosperous workers who ordinarily spend the whole or almost the whole of their incomes, and who yet are in a position both to bear burdens of taxation and to make some savings from income. There are millions of skilled artisans, salaried men and women, well-to-do farmers, who go their way with ease in ordinary times, and whom the ordinary machinery of taxation and finance does not touch. It is not desirable to apply to this large stratum of the community any burdensome direct taxation of incomes. True, some direct levy on them is made through the present remodelling of our income tax; the limit of exemption, formerly \$3,000 to \$4,000 a year, has now been reduced to \$1,000 to \$2,000. But the rate of tax upon the lowest incomes now brought within the purview of the

tax is left very moderate, and this application of the income tax is rather a response to a question of principle than a probable means of attaining a substantial increase of revenue. Consumption taxes again, in the way of import duties and excises, doubtless can bring in something substantial; yet there has been a proper hesitation from resort to them at high rates.

On the other hand, the voluntary handing over of substantial parts of these incomes to the government through the broad distribution of public loans is feasible upon a much larger scale than has before been supposed. It offers in many respects great advantages. The small bond buyer is in the aggregate an important personage. And when he is reached by adequate facilities and proper propaganda, he will respond generously and quickly. At the same time the wide distribution of public loans is the most effective antidote to those consequences of public debts which have caused them to be most strongly opposed. A great public debt means the permanent maintenance of taxation for the purpose of meeting interest upon it, and so the permanent diversion of income from the great mass of the taxpayers to the smaller number of the holders of public securities. If however, the number of these holders be not small, but in the aggregate large; if the distribution of public loans be not solely among the rich and well-to-do, but widely dispersed through every class of the community, then some of the most undesirable features of the resort to loans, if not entirely obviated, will be much mitigated.

In this respect we may learn something from the enemy. The Germans have cultivated to a high degree the stimulation and collection of loan subscriptions from persons of moderate and small means. A rough summing up of the operations under their first five loans indicates that out of a total of something like forty-seven billions of marks (or eleven billions of dollars) about three-fifths have been in subscriptions of ten thousand marks or less. No doubt there are possibilities of manipulation in these figures. We must be on our guard against all official statements that come from that quarter. But there is no reason to question that subscriptions of moderate and small amounts have been heavy. It is gratifying that our own financial leaders are awake to the importance of reaching the small investors and are diffusing our loans as widely as possible. Of the total subscriptions to the first liberty loan, roughly three billions of dollars, one and one-fourth billions were

in amounts of less than ten thousand dollars and received in full their allotment out of the two billions of bonds finally issued, or the same proportion as that just noted for the German loans.

Our conclusion is that we may look forward to the future not indeed with a light heart, but with courage. We have assumed enormous responsibilities. We have not yet sufficiently provided for meeting even those of the present fiscal year. But we have taken great forward steps. We are ready to proceed further; and we may face coming events, not without anxiety, nor without a realization of what the contest means, but with a firm resolve to use our strength and our resources to the utmost, and with a firm confidence that the country will provide the means for the utmost military and naval strength.



## THE TASK OF FINANCING THE WAR

BY JOHN J. FITZGERALD,

Chairman, Committee on Appropriations, House of Representatives,  
Washington, D. C.

At the outbreak of the war there was keen speculation as to its duration. Since the Russo-Japanese War it had been the belief of many eminent military experts that all future wars would be short and decisive. That opinion was predicated upon two important assumptions; one, that modern methods of warfare had been developed along such a plane of destruction that, if hostilities were conducted on an extensive scale, the harvest would be so dreadful as quickly to compel peace; the other, that the financing of military operations upon a gigantic scale was so dependent upon certain definitely fixed money centers, that financiers, rather than military genius, would wield the more potent influence in determining the final results in conflicts between nations.

The difficulties in the Balkan States prior to the present war strengthened those who believed that modern wars must necessarily be short. It is extremely doubtful whether any responsible statesman in any of the countries now engaged in the controversy had the slightest notion in the early days of the war that a war in which were involved practically all of the great civilized powers, or even a relatively small number of the more powerful ones, could endure for any considerable time.

Both of the assumptions have been proved to be unfounded. The wastage in the war, as well as the property loss, and the expenditures necessary to sustain the military operations undertaken have been of such magnitude as to stagger the imagination. The wildest estimates of the most extreme militarists during the period immediately preceding the war have shrunk into insignificance, and no man is sufficiently wise to venture a prediction as to the duration of the hostilities that is of any value in arriving at the correct solutions of many exceedingly important problems pressing for consideration.

Lord Kitchener's announcement shortly after the outbreak of the war that preparations should be made for a three years' conflict



was a rude shock to the civilized world. Received quite generally at first with amused incredulity, it speedily was accepted as an unfortunate reality. The importance of time in the problems to be determined cannot be overestimated. For it is the probable duration of hostilities upon which hinges every question concerning the use of both personnel and material, the conservation of the nations' energies, and the marshaling of the available and of the potential resources of the war afflicted countries.

In at least one very important respect the United States are fortunate. As the war had been waging almost three years before they became embroiled, they have the benefit of the experiences of the other belligerents to profit by, and many grievous and expensive errors that otherwise would probably be unavoidable should not now be made.

If the duration of the war could be definitely fixed or accurately predicted, its financing would be a simple problem in elementary mathematics. If the war were to be sufficiently brief and the expenditures upon any sort of a reasonable scale it would be possible for the United States to imitate the example of Mr. Gladstone in the Crimean War and defray the cost from the current revenues. But there is no such simple problem for the United States. Although war was declared on April 6, 1917, the expenditures up to June 30, 1918, will practically be within a year, which makes the usual, convenient and ordinary basis for comparison.

The appropriations by Congress available till June 30 next aggregate \$18,879,177,014.96. There is included in this sum \$7,000,000,000 to be loaned to the allies of the United States. In addition to the specific appropriations, authority has been given to enter into contract obligations to the extent of \$2,511,553,925.50. Obligations to that extent may be incurred and may mature during this fiscal year, which ends on June 30. If certain manufacturing processes can be carried on more rapidly than contemplated the authorized obligations will be converted into cash payment demands and the expenditures will be measured by the gross total of \$21,399,730,940.46 the sum of the appropriations and contract authorizations.

There have been some intimations that the appropriations were made by the Congress in a blind, uninformed, haphazard manner. I cannot speak for the Senate of the United States, but I am quali-

sed to speak authoritatively for the House of Representatives. Of the \$14,399,730,940.46, which is the total of the appropriations and contract authorizations less the \$7,000,000,000 to be loaned to other belligerents, approximately \$12,000,000,000 were provided in bills prepared under my personal direction, and which were in my charge during their consideration and enactment. With an experience of thirteen years as a member of the Committee on Appropriations, during seven of which I have been its chairman, I am able to state that in my experience no bills were more thoroughly, carefully and intelligently prepared than the bills which made available the vast sums mentioned. More than \$840,000,000 requested by the administration was refused either because the purposes for which the expenditures proposed were not imperatively essential for the conduct of the war, or because it was determined that in many instances progress in preparation could not keep pace with official aspirations, and as the money probably could not be expended in the fiscal year it was not appropriated.

So far the judgment of my colleagues and myself has been justified by events. It is quite possible, however, that men may be mobilized, the equipment manufactured, ships constructed and armies trained and transported and enabled to participate in actual hostilities much more quickly than the Congress believed in providing funds for this year's expenditures. Should that be so, then additional appropriations must be made at the coming session to be available during the current fiscal year.

During the recent session of Congress I had occasion to point out that since the outbreak of the war until August first of this year Great Britain had expended \$21,385,000,000, which sum included \$4,500,000,000 advanced to her allies. Including \$750,000,000 expended by India and the overseas dominions, Great Britain's expenditure during the three years of the war, excluding advances to her allies, aggregate \$18,500,000,000.

During the same period France expended \$15,327,400,000; Russia's burden, which is more of an approximation than any other, was \$15,000,000,000; Italy, during the period of her participation in the war has expended \$3,120,000,000; making a total expenditure by the Entente Allies of \$51,947,400,000.

Germany, including advances to Turkey and Bulgaria, was estimated to have expended \$21,300,000,000, and Austria-Hungary \$12,800,000,000, or a total of \$34,100,000,000.

Including loans the United States in the first year proposes to expend as much as Great Britain, more than France, more than Russia, probably as much as Germany, and one-third more than Austria-Hungary has expended during the entire three years of the war; 23 per cent of the total of all the nations in the war, and 65 per cent as much as Germany and Austria-Hungary during the same period. Even if the amount of the loans to our allies be excluded the figures are still sufficiently startling; and yet as the money to make advances to our allies must be obtained either through loans or taxes the authorized loans cannot be eliminated from consideration.

It must be remembered, too, that these vast expenditures do not make provision for a very extensive military organization contrasted with the numbers that other belligerents have called to the colors. If the United States be compelled to mobilize to the extreme its military resources the figures now under consideration will be dwarfed by comparison with those that will follow.

From a careful study of the purposes for which available funds are to be applied, considering eliminations and probably substitutions, there is no prospect that expenditures will lessen if the war is to continue. They inevitably will increase and be very much greater than during the present year.

The estimated annual revenues of the government from all sources are \$4,033,500,000. The proposed expenditure this year approximates \$20,000,000,000. Upon that basis it is proposed to meet 20 per cent of our expenditures from taxation and 80 per cent from the proceeds of loans. If there be excluded one billion dollars from the estimated expenditures and the same sum from the estimated revenues to represent the normal cost of maintaining the government, it appears that the cost of the war is to be defrayed to the extent of 14 per cent from taxes and 86 per cent from loans.

If all of the other lessons of history are to be ignored the United States at least should not be indifferent to the disastrous consequences that followed the attempt to finance the Civil War by resorting almost exclusively to loans. A grossly inflated national debt, without the proper exercise of the taxing power, inevitably results in an impaired national credit, an increased interest rate and a depreciated currency.

The task that the United States have assumed in this war is so unique, of such magnitude and so fraught with difficulty and peril

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as to compel resort to means that seldom would be required. It is proposed to raise and equip armies numbering in the millions, to construct ships for their transportation to engage in battle three thousand miles away, through seas infested with a hitherto unknown peril. It is proposed to produce food and munitions not only for our own enormous population, but largely for Great Britain, France, Russia, Italy and many small states. The task will be no easy one; it will tax to the extreme our power and our resources. In all preparations in every other direction the plans have been made on a comprehensive scale and with a wise vision that events will justify. Our financial plans are not developed to the extent they should be.

It is the boast of financiers, statesmen and economists of Great Britain that the empire's credit is as sound today as at the outbreak of the war. They assert that the liberal manner in which the taxing power has been used to obtain necessary revenues is wholly responsible for that situation. The wealth of the United States is estimated at \$250,000,000,000; Great Britain's at \$80,000,000,000. With expenditures on account of the war approximately the same Great Britain is obtaining from taxation at least 25 per cent more than the United States, although her wealth is approximately but one-third of ours.

I am not of those who believe that a proper fiscal policy would justify attempting to obtain all the revenues required from taxation. It is doubtful whether any group of public men advocate such a policy. The predominant inclination is to rely chiefly upon loans and my belief is that public men in the United States are too strongly inclined to place the burden upon posterity by resorting to loans.

The true and only justifiable policy is to utilize the taxing power to the fullest extent and to resort to loans for the deficit in revenue. There is no possibility that an undue proportion of the burden will be placed upon revenues. Our preparations have been initiated upon the only safe theory—that the United States has become a participant in a war of extraordinary magnitude that will be of unusual duration. Our fiscal policy must fit that theory.

While resort cannot be had to many sources of revenue for sound economic reasons, while some will not be because of political expediency, there still remain many untouched sources, and heavier levies can be made upon present ones without imposing burdens that cannot be justified.

For instance many believe that with the recent revenue law the limit has been reached in the impositions that may be placed on incomes and excess profits. I am not in accord with that opinion. If the war is prolonged over many years, as it is quite probable, as we have not nearly exhausted our ability to obtain revenue through taxation, it is the part of wisdom to increase quickly our revenues. Four billion dollars annually does not begin to measure the possible revenues of the United States.

During the consideration of the recent revenue bill I made some studies which were to have been utilized in a discussion of this question. The burdens resulting from the preparation of the appropriation bills precluded my participation. An examination of the earnings of 140 of the leading industrial concerns over a period of years furnished much material for reflection. The list was prepared carefully so as to include only concerns believed to have been upon a sound financial basis. Their earnings in 1914 aggregated \$250,000,000, in 1916, \$1,250,000,000.

One fact should be emphasized so forcibly at this time that the American people should not be capable of misunderstanding. It should be proclaimed broadly that neither the individual nor any group was entitled to inordinate profits from the necessities of the government, nor would they be permitted.

I speak not as an enemy of wealth nor as one hostile to successful industry or to proper rewards for the exercise of that peculiar genius essential for the conduct of exceptional enterprise. The future of our people, as well as the fate of civilization and the continuance of democratic institutions, hinges upon the outcome of this war. Individual ambitions, interests or prospects must disappear before the greater objective—the welfare of the nation. No system of taxation can be devised that will apply with exact equality to every individual; the necessities of the government cannot be supplied without business disturbances that will work cruel hardships in some directions. No one can predict in what direction he will be asked to make sacrifice or assume an exceptional burden in the onward progress of the nation to its ultimate end. Many will be called upon for the supreme sacrifice of their lives, none will be tolerated whose grievance rests in the contention that their material prosperity has been arrested or affected in the necessary marshaling of the country's energies.

It is not my purpose to attempt to detail the sources which may still be tapped for additional revenues. This is not the occasion for me to do so. The pressing need at this time is to bring home convincingly to the masses that they must be prepared to endure much greater burdens from taxation. The country must be persuaded to change its extravagant and wasteful habits and to cultivate thrift. During such a crisis the people should not expect to spend as lavishly nor to indulge luxurious tastes as freely as in days of peaceful prosperity. The nation must be awakened as never before in its history; the people must be taken fully into the confidence of the government; they must have presented again and again the real picture of world conditions so that every individual shall appreciate and discharge his obligations in full.

Even if there were not other sound and imperative economic reasons, that effective method of reaching the public conscience would justify resort to extraordinary methods of taxation at this time. No system should be tolerated that will paralyze industry or breed discontent; none should be avoided essential to provide the revenues imperatively required and that will distribute the resulting burdens as equitable as experience and knowledge dictate.

## REACHING THE INDIVIDUAL INVESTOR

BY ALBERT W. ATWOOD,

Princeton, New Jersey.

This paper will be confined to a very limited and specific, although I hope not wholly unimportant, phase of the problem. It is a stupendous subject, and the success of war financing depends on a large number of national and economic questions and policies; upon a sane ratio between taxes and bonds; upon a sane equilibrium between doing away with extravagance and waste on the one hand, and business prosperity on the other; upon an alert observance of what European countries have done; and the finding ultimately, if the war keeps on, of a method, if such a thing is possible, of converting into the basis of credit for war loans, securities owned by our savings banks and insurance companies. That is the most serious problem of all, and one whose solution has not yet been seriously attempted.

The subject of this paper is the specific and limited one of reaching the individual investor in war loans—war bonds. What has happened? President Wilson decided on war; Congress decided on war. Mr. McAdoo and Congress then had to raise the money and they put through a bill; so many bonds, so much taxes. Mr. McAdoo called in the governors of the twelve federal reserve banks and said, "Raise the bonds." That is what it amounts to.

The governors of the twelve federal reserve banks each appointed a committee, and in the larger cities—New York and probably Philadelphia, Boston and Chicago—the committees are made up of men of such prominence and of such wide activities that they cannot devote much time to it; and it comes down to this, that in each large federal reserve center, two or three men, unknown to the public but well known in their particular lines—experts—are given the problem of selling in four weeks, billions of dollars in bonds. In New York City two men practically had to sell two billion dollars worth of bonds in four weeks.

Now let us put ourselves in their places. For lack of time, I am not going to consider at all the question of institutions, that is, of



corporations and their large subscriptions, but just the individual investor. There are three immediate methods of organization for reaching the individual investor: first, community; second, occupational or vocational; and third, one which has been little attempted as yet, *viz.*, his position in the capitalistic scale, in the vernacular, according to how much money he has. That has been attempted only to a slight extent.

In the cities the community organization has been wonderful, but not so, as a general rule, either in the country or in the smaller places. This is natural enough. The city is impersonal, but not so with the small place. Now, I want to pay a tribute to the devoted work of the liberty loan committees in the small places. In my own town, halfway between New York and Philadelphia, the chairman of the committee was a very fine young man who did splendid work, and there are thousands of others like him. But these small town liberty loan committees must wake up and must handle this problem without kid gloves. If they want to raise loans—and they must if this war continues—they have to face the naked problem. They are afraid to go after the subscribers. That is their trouble. Everybody knows everybody else in a small town of five or six thousand population, or in a suburb, and they are afraid to go to them.

And what happens? The rich people subscribe, and the wage-earners, if there happens to be a factory therewith an employer to persuade them or to bring pressure; but the people of moderately comfortable circumstances are not doing their duty, and it is because the bankers and the liberty loan committees are afraid to go after them.

I personally know of a family living on a scale of great luxury that gave it out that they might subscribe for \$200 worth of bonds, but no more. Perhaps they took more and perhaps they took none at all, but there was no method of checking them up. There are numberless instances of plain holding back, of fundamental, individual selfishness.

The occupational organization is splendid in the cities where committees can be organized, but it doesn't work in the small towns at all, and furthermore, no one has yet organized the occupational campaign to reach a class of people, perhaps not great numerically, but of wealthy circumstances. I refer to the independent business



man, the operator, the speculator, the trader and other similar individuals. There is no way of reaching them. There is no way of reaching men of my profession. No one has ever solicited me to buy a liberty bond, except one boy scout.

And most important of all, there seems to be no way of reaching the retired person of just moderate circumstances, and the woman of moderate circumstances—the widows and old maids who have inherited fifty or seventy-five thousand dollars. They are not reached. Some of them are patriotic and have come forward of their own accord, but the occupational program does not get to them, and in the small place the community program does not reach them.

This matter of reaching people according to the amount of money they have is perhaps another phase of the point I have just been making, and I can get at that best by referring to a very specific thing, and that is the matter of quota. For each town a certain figure is presented and the people are told, "You must subscribe a certain amount of bonds." I don't know whether politics has entered into that or not—I rather think it has—at least community politics. For instance, a large city will say to a small town nearby, "You raise such and such an amount," and sometimes they will tell them to raise more than they ought to. That is not the important thing. Perhaps I am open to correction, but I think that these quotas are determined on the basis of bank resources and to some extent, I think—in the second liberty loan, at least—of population.

Now, that may be the only practical basis. It is very foolish for me to criticize a thing that other people know very much more about, but if this war goes on it will be necessary to have a committee of experts, of economists, to try to get at this thing on the basis of wealth and make these quotas on the basis of wealth, as well as on the basis of banking resources.

Take the little town of Kerhonkson in New York state. It exceeded its quota many times and there was an item in the papers about it. Yes, it exceeded its quota many times because there are no banks in the town while there is a large sanatorium patronized by millionaires. The owner of the sanatorium is wealthy and is very loyal and he probably put in a big subscription himself. There is no particular credit to the town in that, and they would not have

had the apparent results they did if their quota had been on the basis of actual wealth instead of banking resources.

It may be necessary in the small places to resort to publicity. Of course, everyone is opposed to that, but I honestly believe that if the war goes on, we must, at least in the smaller places, post up a list of those who have subscribed, and if that is once done there will be no lack of subscriptions.

Now these are details, but they are important ones. Some captain of industry has said that we might have to raise a hundred billion dollars if this war continues, and it reminds me of a dream I had the other night. I was approaching a solid stone wall that couldn't be scaled, but as I came up to it, it faded away and I walked right through.

It is not as easy as that. Professor Taussig has said that we must not approach it with a light heart; but three years ago our most eminent bankers said that if we loaned more than one billion dollars to our allies, we would drain our country of its resources. We have already loaned them some five billions, and we have bought back three billions of our own securities, and we are raising a large sum of our own. That shows how these problems change as we approach them.

I have lately been making for an entirely different purpose, a close analysis of what may seem to be an uninteresting subject—the personnel as shown in the directory of the New York Stock Exchange. It is a very great revelation, although I have made very similar analyses before. If you will go through that directory you will find there a machinery, for the most part, unknown to the world for investment of surplus wealth, that is perfectly marvelous. I don't refer to what we ordinarily call the bond or brokerage business, but to the fact that this country is approaching, as England has long ago done, the position of being a possessor of great accumulated wealth, and that one broker after another is really nothing but a family investment agent. That is what it amounts to. There are railroad magnates, bankers, steel kings, copper kings, and so on indefinitely. Hundreds of firms in the New York Stock Exchange are nothing but channels for the investment of accumulated wealth, and I do not think we realize how much there is of that in this country.

## BORROWING AS A PHASE OF WAR FINANCIERING

BY HENRY C. ADAMS,

University of Michigan.

Since the United States became an active belligerent many opinions have been expressed relative to the financial management of this war. I have tried to analyze these opinions in order to discover, if possible, the economic basis on which they rest. I have also followed the debates in Congress on finance bills, and have read the utterances of the Secretary of the Treasury, who, by virtue of his official position, ought to be the leader in financial opinion and the formulator of a comprehensive financial program. While the legislative outcome of all this writing and speaking does, on the whole, command a qualified approval, it fails, as it seems to me, to grasp the significance of the industrial side of war financing. It is exclusively to this phase of the subject that I ask your attention.

### PUBLIC AND PRIVATE CREDIT COMPARED

My first remark is not so much critical as it is the expression of a neglected truism. Much of the gratuitous advice given to Congress rests on the implication that the rules of credit evolved from the study of ordinary business experience can be carried over and applied without modification to government borrowing in time of war. This, of course, is not true. Capital borrowed for commercial investment is a step in capital building; capital borrowed for war uses is a step in capital annihilation. The former adds a new source from which the fund of free capital may be filled; the latter not only prevents the opening of new sources, but it tends to dry up some of the sources from which free capital now flows. Any program for the financial management of a war that fails to recognize, and to act on, this truth, is bound to meet misfortune.

Again, in the case of private borrowing, it is the continued prosperity of a particular business that validates the underlying securities; in the case of public borrowing, it is the continued prosperity of all industries, regarded as a production unit, that

gives worth to government bonds. From this, also, the war financier may read a lesson.

But perhaps the most significant difference between the use of credit for investment and for war is found in the principle upon which reliance must be placed for the control of each. The commercial investment of capital is controlled by the expectation of personal profit and, consequently, all of the well established laws of business conduct may be used as tests for such an investment. This control and this test are absent when a government borrows money to meet the cost of war. It means the adjustment of credit contracts with a view to their ultimate results as well as their immediate success. This means the possibility, if not indeed the necessity, of a radical interference with the orderly procedure of an established market for capital. The selection of a rate of interest on a government bond, for example, does not so much depend on the ability of the government to sell its bonds, as it does on the industrial effect of the sale of bonds at the rate selected. The experience of an industrial promoter who holds in mind the making of a profit by a particular enterprise, is of slight importance for the solution of the task of carrying through the finances of a great war. A new set of industrial purposes and new conditions for the use of the machinery of credits are brought to the surface by the advent of a war. This is the first thought to which I desire to give expression.

#### THE NATURE OF THE WAR BURDEN

It is equally necessary to understand correctly the content of the war burden. This is not, as many seem to reason, the sense of deprivation that comes with the payment of money, whether the occasion of that payment is to fill a loan or to cover a tax. There is doubtless a psychological side to war financing. A successful treasury policy must make proper use of the motives by which men are controlled when they deal in business affairs. But this does not mean that the industrial burden of a war is a mental state, or that the chief element in that burden can be spread over a period of time by the manipulation of credit instruments.

The burden of a war, correctly apprehended, consists in the use of the productive power of the country for unproductive consumption. When a nation declares war, it has turned its face towards

commercial bankruptcy. Its position is altogether like that of a railway that continues to operate even though it fails to maintain its property out of current revenues. This, of course, means, in the case of the railway, that the management borrows from its property, that capital is depleted to cover operating expenses; and it is only a question of time before such a practice will carry the property into the hands of a receiver.

This is equally true of the industry of the nation regarded as a collective business unit and from this statement one may read the task of the financier in time of war. It is for him to so control both the machinery of credit and the machinery of taxation that the productive power of the country may be used to make headway against unproductive consumption, and at the same time to hold under control those forces that tend to wreck the industrial organization by which that power is maintained. This is the gist of the problem of war financiering and every act of government, whether within the Treasury or without, that fails to test its merits by this rule is likely to prove to be an embarrassment to sound financiering.

This point of view is familiar to all students of finance but somehow it always needs to be "hammered in" when the occasion for a war program arrives. For that reason, I venture to try to express it in another way. The claim for production in time of war need be no greater than that claim in time of peace. The demands of government are doubtless increased and there is also an embarrassing change in the kind of things demanded; but this demand, if considerable, must result in the curtailment of ordinary peace demands. This means that the task of carrying through a great war involves a radical readjustment of established industries. It is the cost of this transition that constitutes the great, the acute, the immediate burden of the war—a burden none the less real because it is unrecorded on the books of the Treasury. This transition ought to be attained at the earliest possible moment, so that balance in market conditions may be restored and maintained notwithstanding the change in the character of current consumption. To assist in this transition, if not indeed to place it under guidance and control, is a peculiar service of credit financiering; and it is the recognition of this responsibility that ought to give a definite industrial purpose to public borrowing during the first and second

years of a great war. This, and this alone, will enable the financier to lay the foundation of a trustworthy program of treasury administration.

### THE BEARING OF INDUSTRIAL CONDITIONS

Since the task of financing a war centers in the control of industrial conditions, the industrial situation at the outbreak of hostilities is of great significance. This remark applied to the business situation of last spring calls for three observations.

*First.* The foreign market for capital was closed. The United States had for two years been loaning work to Europe. England, France and Russia were still in the American market with large orders for war munitions and their inability to pay for goods received had so affected foreign exchanges that settlement with American capital became a necessity. Under such conditions the classical argument in favor of a loan policy at the outbreak of a war was no longer applicable. It was not possible for this country, last spring, to relieve the first stress on home industries by calling to its aid the workshops of foreign countries. It was not possible to wait, as might have been done if bonds could have been sold in the foreign market, for the law of supply and demand, working through an inflated market, to effect the necessary readjustments in industry. This, so far as I know, is a new situation in war financiering. Since the world became familiar with international credits, there never has been a war that involved practically all of the capital-building nations of the world.

The lesson to be read from this situation is not far to seek. The United States must rely on its own capital and on its own labor for carrying through this war; and the quicker this capital and labor are organized to produce what the war needs, the earlier will the industrial phase of the nation's finances be brought under control.

*Second.* The second fact in the present situation I do not profess to understand. Not only is the door closed to foreign borrowing, but the financial center of the world has been transferred to New York. This, at least, is said to be the case. It is referred to by responsible writers as a fact of great significance and as an element of strength in the financial situation of this country. This may perhaps be true, but it looks to me like an increased demand for American capital in addition to our current industrial and war

demands. It may mean, however, the flow of neutral capital to New York and possibly of selling United States bonds in the Orient, in South America and in the neutral countries of Europe. But I confess that I do not understand what this transfer of the financial center of the world to New York may mean, and let it pass as an important fact that should be analyzed and mastered by those who are responsible for the financial program on which this war is to be fought out.

*Third.* A third fact of importance in the industrial situation is that the outbreak of hostilities found this country in a condition of inflated and one-sided prosperity. Had the formulation of a financial program taken place in 1913, when business was relatively slack, the task of the financier would have been somewhat easier. Under such conditions reasonable taxation would have acted as a stimulant, and the expansion of government demands would have been regarded as industrial encouragement. It would have been possible, by a judicious use of public credit at normal rates of interest, to have assisted, if not to have forced, the beginning of an industrial transition from a condition of peace to a condition of war.

The practical suggestion that springs from the fact that in April last this country was in a condition of unhealthy prosperity pertains to the rate of interest that the first public loans should have borne. Of course, we who are on the outside do not know all of the considerations that led the administration to issue its first loan at  $3\frac{1}{2}$  per cent and its second loan at 4 per cent. These considerations may have been non-financial in character; but, if a quick change in the industrial machinery of production is accepted as the prime test of a sound financial program for the first year of belligerent conditions, there is reason to believe that this result is retarded rather than hastened by an issue of public bonds at a rate of interest below the normal market rate. It is, however, of slight use to discuss this phase of the problem. The two liberty loans are accomplished facts. They are a new factor to be considered in the further financial conduct of this war. The manner of their industrial working is at present highly speculative. It is possible that the movement in capital resulting from them is along channels that will help rather than hinder the reorganization of the workers of this country on a war footing. Of the enthusiasm which they aroused there can be no question, and this fact at least is the

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occasion for encouragement. But the making of a program adequate to meet the demands which this war is likely to impose is a task as yet unaccomplished.

#### A SUGGESTION

There is nothing new in the principles of the science of finance, but the application of these principles to ever changing conditions sometimes justifies the consideration of new expedients. It is from this point of view that I desire to say a word.

There are three facts respecting the conditions under which this war is being fought that impose unusual responsibilities on the administration. The first is the dependence of the allies on the United States for an adequate food supply; the second is the development of a sense of social justice which forbids the government to make use of market inflation for carrying through a drastic financial program; and the third is the remarkable growth of class interest as exemplified in the constant demands for increased wages.

The situation created by these three facts is serious. They make the task of financing this war a difficult one. Thus far, the administration has endeavored to meet these responsibilities by establishing an organization for food control; by attempting to control the minimum price and to execute contracts on the basis of analyzed costs; and by accepting the financial liability for the payment of wages in order to keep industries going. These attempts, also, like the issue of the liberty loans, must be regarded as elements in the present situation, so quickly do ideas crystallize into conditions. The suggestion which I wish to make is that this effort on the part of the government to control the food situation, to adjust prices for munitions of war, and to pay wages which will keep the wheels of industry turning, cannot be carried on successfully each independently of the other; nor can any of them be accomplished unless they are made to correlate with the issue of bonds and the collection of taxes in a comprehensive, consistent and adequate treasury policy. These tasks are, from their nature and because of their industrial significance, a part of the task of financing a war.

It is possible to make this suggestion a little more concrete. Consider, for example, the problem of food supply. Nothing will be



accomplished by the declaration of a minimum price, or by an attempt on the part of the federal government to out-speculate the speculators. If anything effective is to be accomplished along this line it is essential that the ordinary considerations of commercial profits should be brought into play under the direction of a public purpose. Last spring a special effort was made to induce farmers to raise potatoes. The farmers of Michigan expressed themselves as willing to plant potatoes provided they were guaranteed a normal profit on the planting. They asked the guarantee of a maximum price or of a price adjusted to an analysis of cost. This the government was unwilling to do. According to the premise laid down in this paper the government should have guaranteed the price and have covered the guarantee by an issue to the individual farmer, in case of accruing liability, of a 5 per cent bond. Assuming this to have been done, not only in the case of planting potatoes but in every other crop the production of which in adequate amounts is essential for carrying on this war, and assuming that the direction of agricultural planting had been sought under the guidance of the administration, not only would the bonds have been placed where, from the political point of view, they would do the most good, but the industrial problem, so far as war financiering is concerned, would have been solved for the industry of agriculture. Suggestions for the administration of such a project may be found in the way France manages her tobacco monopoly.

The same procedure could be followed with factories that furnish the government with war supplies. A certain portion of the amount that the government must engage to pay (perhaps an abnormal profit, who can tell?) could be covered by government bonds. This suggestion is especially pertinent in the case of the building of new factories to meet the new war demands. In such cases, the uncertain element is the depreciation in the value of the investment when the war draws to a close. It is the fear of this loss that retards the outswing of new investments for producing what the government needs. Eight per cent current profit, with the possible loss of a 100 per cent depreciation in two years due to obsolescence, is not an attractive outlook. It is a reasonable proposition, in order to encourage the investment of private capital in war production, for the government to promise to reimburse investors for such loss of capital as they may sustain, and the easiest

way of covering this loss is by the issue of bonds to factory owners equal to the depreciation of obsolescence. By this means, the immediate necessity of ready money collected through taxes would be reduced; and this, as every student of finance knows, is the only justification of the use of public credit.

The suggestion here submitted might be used, also with good advantage, in the treatment of wage adjustments. If the government must guarantee wages in order to keep industries going, it would be highly advantageous for such guarantee to be covered by the use of public credit. The idea of partnership between the government and certain industries during the continuance of the war, would, by this expedient, be extended to the great body of industrial workmen. The difficulties, as well as the advantages of this plan, lie entirely on the surface, and for this reason I do not venture at this time to consider the details of the suggestion.

## FINANCING WITH WAR SAVINGS CERTIFICATES

BY FRANK A. VANDERLIP,

President, National City Bank, New York City.

The first factor in a financial problem, whether that problem has to be answered by a corporate manager or a minister of finance, is its size, and one of the most remarkable things about the present problem of borrowing by the government is that the size of the problem is utterly unknown. No one can tell within billions of dollars what the demand will be upon the treasury in the eight months that are left of this fiscal year.

Billions of dollars is a new phrase. Our whole debt was but a billion dollars when this war broke out. Few of us, if any, understand what a billion dollars is. When Congress got to appropriating in amounts reckoned by many billion dollars, I think that Congress itself almost lost track of what it meant. Appropriations, indeed, were so large that they were much misstated at the close of Congress. There was an official statement that the appropriations of this Congress had reached twenty-one billion, three hundred million. That amount was an error. The exact figures are not yet made up, but I was told at the Treasury recently that the present estimate is nineteen billion dollars, the former estimate having had some duplications.

Appropriating money has usually meant spending money. That does not necessarily follow when you get into sums approximating twenty billion dollars. Not only are we just learning the amount of the appropriations, but no one can tell within several billion dollars of how much of those appropriations will be used.

When war broke out we were as completely unprepared as it was possible for a nation of this size to be. We started to prepare, to prepare in every way, to prepare for a long war. Men charged with the responsibility of preparing this thing or that went at it with energy, with enthusiasm, with a patriotic desire that the thing that they were responsible for should be fully prepared at as early a date as possible. The result of that has been that we have a situation in

which no perspective has been put upon the problem. Emphasis has been placed everywhere.

It follows that these huge sums asked for from Congress were patriotically granted by Congress—Congress could do little else. There is no use of fault finding with the amount of this total. There is no just ground for criticism, but it is a total so huge that it is almost beyond comprehension, and a total so uncertain when it comes to the actual demand for credit from the Treasury that the Secretary of the Treasury is facing a situation in which he cannot calculate, as I have said, by billions of dollars what the total demand upon him will be.

Now money does not fight a war. We can appropriate money. We can provide credit but that does not accomplish the result. It is current effort, it is man power, it is industrial capacity, it is goods and services. So no matter what we appropriate, no matter what the Treasury provides, the sum that will be spent will be measured by the goods and services that can be bought.

In my own opinion—and this is in no sense an official opinion or one representing the government—I do not believe that the total expenditures can reach by a very long mark the total appropriations. It is true that contracts have been made or are in process of being made, that will absorb, let us say, the total nineteen billion dollars, but no man can say when the goods that are being contracted for will be delivered. We are putting a pressure upon the industrial capacity of the country that is undoubtedly greater than it can meet. Up to the present time there has been no directing mind over this problem saying what is most necessary, what is absolutely essential and what can be deferred, measuring the industrial capacity of the people to see how the demand should be applied to our total industrial resources.

That is going to be necessary if we bring efficiency and democracy into harmony. At present there may be as great activity put upon providing proving grounds for a gun that will not be built in two years as there is in providing something that should be going into the next ship; and the ship will be the controlling factor of what we are able to do.

It does no good to call men from the draft, to build expensive camps for them, to provide them with arms, if we cannot transport them, if we cannot feed them in the field, if we cannot provide the

things that are necessary to an army. It is this necessity for perspective on the situation that is the most needed thing that I see in Washington and the thing that will determine what the financial problem of the government is to be.

But let us suppose that it is to be nineteen billion dollars within the fiscal year—and the figures would seem to indicate that that is it. The different departments declare that they can spend the amount of the appropriations up to that total. I doubt myself if they can, but that is the belief of the people who are responsible for the expenditure. With that statement in mind, the Secretary of the Treasury stated prior to the second liberty loan that it would be necessary to float fourteen billions of bonds this year. That statement was entirely warranted with the facts before him. I believe the result will be a very much smaller flotation. I think the situation can be so managed that a total of so huge an amount of bonds need not be presented to the investing public.

Now, on the hypothesis of nineteen billions, we would have raised two billions from the first liberty loan, which was sold in the last fiscal year but paid for in this. We would get a minimum of three billions from the second liberty loan. Happily, it will be considerably over that. The optimistic view is that we will get four billion dollars from taxation. That would leave ten billions from additional bonds.

With the almost religious fervor that has been manifested in the sale of these bonds it is entirely possible that that amount of bonds could be sold, but in my opinion that amount of bonds will not be necessary. I would rather make a forecast—and remember that it is on the most inadequate data, that it is entirely personal and subject not only to what can be spent but what may still be appropriated and spent during the fiscal year—but I can guess that we might work the situation somewhat this way: receiving from the first liberty loan, two billions; from taxation, four billions; from short-term treasury certificates, let us say a possible total of four billions; from the second liberty loan now sold, somewhere between three and four billions; from War Savings Certificates, of which I shall speak later, possibly a billion. Now, with those resources there would be left only the task of providing from future liberty loans four or five billions to make the total nineteen billions—four or five, depending on whether three or four are realized from the loan just closed.

I see no reason why there should not be a very large amount of financing done with the short-term treasury note. The government has become the great purchaser; the government is conducting a great part of the business of this country. These short-term treasury notes are in effect government commercial paper. They are entirely proper for a bank to hold and there is capacity in the banking situation to readily carry the total of four billions. It would require but a shade over 10 per cent of the resources of each bank invested in these short-term treasury warrants to make up a total of four billions.

I want to explain something of the War Savings Certificates. I want to take you into my confidence and tell you just what we are going to do later with this scheme of War Savings Certificates.

In the act authorizing the second liberty loan, Congress granted authority to the Secretary of the Treasury to issue two billion dollars of War Savings Certificates. The act declared that they should not run over five years and that it was unlawful for a person to hold more than a thousand dollars. In other respects the matter is left wholly to the discretion of the Secretary. He has done me the honor of appointing me chairman of the committee to work out the details and the flotation of these two billions of War Savings Certificates.

We have had the experience of England, which has been extremely successful, but in viewing that experience we have decided to depart materially from the English plan. The English plan made the maturity of each certificate five years from the date that the money was paid into the post office. The date of payment, therefore, had to be officially noted, and the dealing, therefore, had to be entirely with the post office.

I desired to evolve a plan whereby people would not be confined to dealing with the post office, whereby there would be the greatest facilities for offering these securities for sale. It was necessary to have either a fixed maturity and a changing price or a changeable maturity and a fixed price. We chose the fixed maturity and the obligation of the United States will be issued as of January 2, 1918, to mature January 2, 1923. It will be in the form of a large stamp, printed in green, executed by the Bureau of Printing and Engraving. That stamp will sell in the month of January at four dollars and twelve cents. Four dollars and twelve cents at four per

cent, at compound interest, compounded quarterly, would amount to five dollars at the end of five years.

When a purchaser buys his first stamp he will be given a certificate on which there are spaces for attaching twenty of these stamps. When the purchaser buys his first stamp and attaches it to the certificate his name is written with his address and street address. He then has all the rights in respect to one stamp that he would have in respect to a certificate filled with stamps and there is the incentive to add more because of the vacant places. If he holds that until maturity, January 1, 1923, he can get at any post office, five dollars.

Now, it is the intention of the government that he should hold it to maturity, but if his exigencies are such that he needs the money before maturity, he can at any time, at any post office, on ten days' notice, receive what he paid, plus one cent a month in respect to each stamp. That is about 3 per cent—a little less than 3 per cent simple interest—so there is an advantage in his carrying it to maturity; but if he needs his money sooner he can get it at any post office.

Now, suppose he loses this. It will be contained in an envelope which will inform the finder that it is of value only to the owner, and the finder need do nothing but drop it into the nearest post office box without postage or further address. The post office will return it to the owner. Suppose a dishonest person finds it and undertakes to forge the name of the owner. If he does that successfully and the post office pays him, the owner has lost his money. If the document is burned up or otherwise disappears, the owner has lost his money.

The prospective purchaser may say, "That will not do. That is not satisfactory. I want greater safety." Very well, the government offers greater safety. If the owner chooses to go to a post office and have this registered, the stamps that he has attached to it are cancelled; if he will then go, whenever he attaches an additional stamp, and have that registered, he is then in a position where, if it is stolen, lost or destroyed, it is nothing more than a pass book and the post office will pay to the rightful owner, whether he produces his certificate or not.

For the purpose of accumulating four dollars in small amounts, the government will issue a small stamp, the size of a postage stamp. It is called a thrift stamp, costs twenty-five cents and there is a thrift card given upon which there are places for sixteen of these stamps.



When that is filled, it can be exchanged, with twelve cents or thirteen cents or whatever the price in the month of the exchange may be, for one of the other stamps that bear interest. These thrift stamps bear no interest.

Now we hope to raise two billion dollars with these small obligations. But that is the smallest thing that we hope to do with this scheme. We hope to impress thrift upon this people and we hope to carry over the idea that this country cannot produce twenty billion dollars of goods for the government unless people will be economical, unless they will refuse to employ, on unnecessary work-making unnecessary things, the labor which the government needs upon the things that it requires for the war. That is the great lesson that we want to impress and the great good that I see that will flow from this War Savings Certificate plan.

And it is a lesson that must be learned not alone by the people who can save only in small amounts, but by everyone of us, and most of all by the business man who wants business as usual. It is impossible and utterly undesirable that we have business as usual. It is necessary that the whole available man power of this country be used for the purposes of the government; and the man is unpatriotic, no matter how much money he has in his pocket, who will employ labor to do an unnecessary thing and thereby compete with the government for labor.

I do not take a pessimistic view in the least in regard to the future of government finance. The demands that are to be made upon the Treasury are huge beyond anything that we have ever known. To illustrate how great they are, every expenditure that this government had made from 1791 to the beginning of this present year, through the War of 1812, through the Mexican War, through the great Civil War, through the Spanish War—every expenditure of every kind footed a little over twenty-six billions; and we are preparing to spend nineteen billions in one year! That measures somewhat the size of the task with which we are engaged.

But that expenditure is not all of the unproductive type. We are going to loan seven billion dollars of that nineteen to our foreign allies. We are going to spend considerably over a billion in the creation of a merchant marine. There are a great many expenditures that are of more or less a permanent character, so that it is not all wasted, not all gone.



But whatever the amount that it is necessary to raise and I must admit the difference is very wide between what the figures taken from one source or another might indicate—but whatever that amount is, there is capacity in the people to raise it. The first liberty loan, two billions in extent, was taken by the people, not by the banks. It was all absorbed within a very few weeks so that there was practically none left either in the investment account or in collateral in banks—the most amazing exhibition of financial strength. When the total of this last loan has been announced, we will know that that total will be another amazing exhibition.

The judgments of the Treasury in regard to the type of bonds, in regard to the amount, the form of offering, etc., have been proven to be wise. They were at variance at times with the advice of experienced men, but the advice of experienced men was at variance one with another. Results, it seems to me, have very fully demonstrated the wisdom of the Secretary of the Treasury in the various decisions that he has made in regard to government finance up to the present time.

I have gone back into the Treasury after an absence of sixteen years and I want to bear just a word of testimony to the efficiency of that great business machine. It is one of the most efficient business organizations in this country. I believed that was so when I was in the Treasury nearly twenty years ago. When I go back there and find men still occupying the high positions that they occupied when I was there, or other young men that I brought there, because of their trained ability, now occupying places of importance, I know that the Treasury has not been raided.

The Treasury is still the efficient machine that the government ought to have in this great crisis. I believe that we can look on the leadership that we are to have through this crisis with satisfaction, and I believe that whatever turns out to be the size of the task, the people are competent to meet it and will meet it.

## WAR TIME BORROWING BY THE GOVERNMENT

By MORTIMER L. SCHIFF,

Kuhn, Loeb and Company, New York City.

We have not been a borrowing nation and it is a new departure for us to have recourse to loans to provide for our needs. This is very apparent if we compare our national debt with that of other countries. Before the war, ours was only about \$11 per capita, while that of England and Germany was about \$75 each and that of France about \$160. The war has changed this and, as closely as one can estimate, our per capita debt has risen already to about \$70, while that of England and France is over \$500 each and that of Germany about \$350. We are dependent on our own resources, and it is our own people who must find the funds for financing our expenditures. We borrow at home and require no special safeguards for our bonds, such as some nations have been forced to provide in order to interest foreign capital. With us there are no questions involved of pledging certain revenues, of giving collateral security or of having lottery features. The simple promise to pay of our government is sufficient, and the main questions which our authorities have to consider are the amount and frequency of the offerings, the price of issue, the rate of interest, the length of time which the bonds are to run and whether they are to be taxable or not.

It is the policy of our government that its loans shall be offered for public popular subscription without discrimination, that they shall be issued at par and that no commissions or advertising expenses shall be paid. There can be no disagreement as to the first proposition, the second and third are somewhat open to question. European governments have never hesitated to issue bonds at a discount, realizing that this is simply a method of expressing the interest rate to be paid. In addition, there is a certain appeal to the investor in a bond at a discount, which is lacking in one issued at par, as experience has shown that in the former case there is as a rule more chance of the market price advancing towards par, than in the latter of its going to a premium.

As to the payment of commissions, European governments have found it of advantage to do this, not only in order to reimburse in this way banks, bankers and brokers in part at least for their out-of-pocket expenses, but also to encourage and stimulate competition among them in securing subscriptions. Much can be said in favor of this, and while it would help materially in placing our loans in this country, I think we can continue to do without it and rely upon the patriotism of financial agencies to do their utmost to secure subscriptions, even though it costs them money to do so. The same holds true of advertising expenses; with the mass of newspapers and publications of all kinds circulating in this country, the cost of paid advertising would probably be prohibitive, as all would have to receive consideration for political, if for no other reasons. The system, which Secretary McAdoo has adopted, of central committees in each federal reserve district, with a mass of local and trade committees to assist them, is probably the best method at our disposal to reach all the people of this country. It has been inspiring to see the readiness with which men and women have given their time and effort, to say nothing of their financial contributions. For instance, in the Second Federal Reserve District, about which I am best informed, it is estimated that the committee in the recent loan had made available to it by advertisers an amount of free advertising space which, if paid for, would have cost at least \$1,000,000. This system of volunteer service has worked exceedingly well and has created a tremendous volume of enthusiasm and coöperation, which could hardly have been secured in any other manner.

The amount to be offered at any one time must be determined not only by the financial needs of the government, but also by the power of absorption of the public. England made her loan of last February an open one, with no fixed minimum or maximum, and secured over \$5,000,000,000 from about 8,000,000 subscribers. Our first loan was limited to \$2,000,000,000 and the recent one was in the nature of a compromise, with a minimum of \$3,000,000,000 and an over-allotment to a certain extent permitted. Theoretically, the best way is an open loan in order not to be limited to the allotment of a definite amount. Each subscription then becomes an actual purchase and the machinery is much simplified. It is always easier to sell securities outright than to offer them for subscription, subject to allotment. This has been recognized in the last issue by the

acceptance of payment in full and allotment at once of subscriptions of less than \$1,000, with immediate delivery of temporary bonds. The small subscriber does not want to sign a subscription blank, make a deposit and then go through a considerable amount of red tape before he gets the actual bond. He wants to pay for and receive his bond without any formality and with the minimum of bother. The same holds true to a great extent of those who are willing and able to take larger amounts. It seems doubtful to me, however, whether the country is ripe for an open offering and I am inclined to believe that the best results will be secured if we continue for the present, at least, the policy of offering a definite amount with a partial or possibly even an entire over-allotment permitted. The recent loan has furnished conclusive evidence that the American temperament requires the stimulus of having a mark to shoot at. It is apparent that the success of the offering was due primarily to every district, every locality, every agency knowing what it was expected to do and striving to provide its quota. The allotment of a definite share of the responsibility to each community and to every financial institution has proven its effectiveness, and I am convinced that if it had not been possible to make this appeal to local pride and individual rivalry, no such amounts of subscriptions could have been secured.

The matter of timing the offerings is fraught with considerable difficulty. It would be best, of course, if there could be a sufficiently long interval between issues to enable the accumulation of profits, income and savings, but with our enormous requirements, this may not be feasible and it may be that our offerings must follow each other in rather quick succession. England, however, has found it possible to let a longer period elapse between offerings and to rely in the meantime on receipts from taxation and on short time borrowing. Even in Germany, where there has been apparently very little, if any war taxation, there has been an interval of at least six months between issues. In the recent loan, we found that the response from corporate employes was inferior to that in the first loan, because they had not yet completed their payments on the bonds of the first issue to which they had subscribed and, therefore, were not disposed and probably not in a position to pledge any considerable further amounts of their wages and salaries in partial payment for subscriptions to the new issue. Another reason for avoiding, if

possible, offerings coming in too quick succession, is that both the public and the workers must be given a rest; otherwise enthusiasm is apt to be lessened and the issue may fall flat. The most effective method would be to so time our issues as to follow and have direct relation to military successes, or even failures. This would make the task of placing the bonds much easier on account of the psychological effect on the people of such happenings, but I realize that this procedure is hardly feasible.

The most important question which the Treasury Department has to determine in the case of each issue, subject of course to the authorization given by Congress, is the rate of interest, as with our policy of offering bonds at par, it is this which expresses the offering price and the return which the bonds yield. If our people are to invest readily in government bonds we must induce them to do so by offering them proper terms. It is all very well to depend upon patriotism for the sale of a certain amount of bonds, but the tremendous sums which this war requires to be raised by loans can be forthcoming only if the economic inducement to subscribe is proportionate to the yield of other investments. Experience, both here and abroad, has shown that while many subscribe from patriotic motives and with little consideration to the yield of the bonds, the main appeal must be based on the quality and attractiveness of the security itself as an investment. No citizen has the right in times of war to invest his savings as he likes, looking only to the security of the principal and the opportunity for profit. Business cannot and must not go on as usual during war and priority must be given the needs of the government, be they for steel, coal, money or any other commodity. But a fair price must be paid for money, just as for anything else, even though the government is entitled to the lowest possible interest rate and to have its needs supplied before those of private enterprise. The general trend of the investment market cannot be ignored with impunity. A certain margin between the yield of government bonds and those of other high-grade investments is permissible; if this margin is stretched too much the public may not respond. For the government to pay a liberal rate of interest on its loans is the wisest policy. It draws small and large savings to the Treasury and thereby discourages extravagance among the people at large, thus making it easier for the country to obtain the things it needs for the war. The rate of interest depends also on whether

principal and interest of the bonds are taxable or not and, if so, to what extent. It is readily seen that the higher the rate the less necessity there is for full or partial tax exemption, but on the other hand, if the rate is too high the effect on other securities is bad and may result in serious collapse. With our enormous requirements, however, we must attract all capital and savings, be they large or small. It has been said that making bonds tax free is a discrimination against the small subscriber, but is not the reverse also true? Why are not taxable bonds just as much a discrimination against the large subscriber, whose ready response to government loans is at least equally important? Would it therefore not be best if we offered the subscriber the option to take either a tax-free bond bearing a comparatively low rate of interest, or a taxable one at a rate approximating the return on high-grade taxable investments? The difference between the two could be about the average income tax on larger incomes, so that, except in special instances, which would probably not be very numerous, the net return of both classes would be substantially the same. Some specially situated might get some advantage from such a policy, but that can hardly be avoided when we are dealing with matters of such magnitude.

I favor the amortization of government loans by sinking fund payments, as heavy maturities are thus avoided. We are borrowing at low rates of interest compared to other belligerents, and are lending to our Allies at the same moderate rates. Would it not be better for us all if an amortization charge were added semi-annually so that repayment were spread over a number of years, instead of the entire amount coming due at one time? If such a policy were adopted it might be well to limit our special taxation for war purposes to an amount sufficient to provide for the interest and sinking fund on such bonds as may be issued. In fixing the method of repayment, we must have in mind not only ourselves, but also our Allies and be guided to a considerable extent by what is most convenient and least onerous to them. It may be necessary for this or other reasons for us to continue the policy of a fixed maturity, with the bonds subject to redemption at an earlier date, in which case the maturity to be selected will depend upon various factors. If, in order to make the issue a success, a high rate of interest is necessary, the bonds should have a comparatively early maturity, as it is in the interest of the government that such a loan be refunded into a lower

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interest-bearing issue at the earliest possible moment. It must not be overlooked, however, that the higher the rate the more desirous the investor is to insure the receipt of such return on his investment for the longest possible period and the longer the life of such a bond, the more attractive it becomes. Short time loans, such as our existing issues of Certificates of Indebtedness, are the easiest type of security to sell, as they have a special appeal to banking institutions and are for them a particularly attractive form of investment. But that is after all only temporary financing. In long time borrowing, the effect on posterity must also be considered. If the life of the bonds is very long, it is not fair to future generations; if it is very short, the burden is too great on the present one. The middle-road is probably the best, and I am inclined to think that unless the rate of interest must be materially increased, a maturity of from twenty to thirty years is probably the most desirable, both from the standpoint of the government and of the investor.

Of course, in the case of each issue, there are many questions of detail which must be settled, but as we become more experienced, these become simplified and more and more definite rules can be laid down. Such are the sizes of the pieces, the machinery of receiving subscriptions and of delivering bonds, the dates for payment, partial payment plans, terms of convertibility into future issues, war savings certificates and their relation to long time issues. The latter, as well as partial payment plans, are of great importance, as the loan of his savings to the government must be made simple and convenient to the small investor. It is towards him particularly that most of the educational work has to be directed and the result has shown that the man of moderate means and the wage-earner can be induced to invest in government securities, even though heretofore they may not have been buyers of bonds. The only class which it seems difficult to reach, are the farmers, and the response from them appears to have been unsatisfactory. It is strange that this should be so, as they are so prosperous. Their burden of taxation is comparatively light and the least we can expect is that they subscribe liberally to government loans.

The subscribers to small amounts find often considerable difficulty in providing for the safekeeping of the bonds they purchase. Most of them have no facilities for this purpose and many of them do not appear to have even a bank account. Many banks, trust

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companies and safe deposit companies have offered their services free for the taking care of limited amounts of the bonds, but these small investors do not as a rule know how to go about it to avail themselves of these facilities, even when they are available. The government should provide some system by which the small subscriber would have a minimum of trouble and no expense in properly safe-keeping the bond or bonds which he purchases. We might well follow the example of England and utilize the federal reserve banks in this country in a capacity similar to that of the Bank of England in Great Britain. As I understand it, any holder of British government securities can take them to the Bank of England, have them inscribed in one or more names and receive therefor a receipt, which is transferable only on the books of the bank. If the receipt is lost or mislaid the owner does not suffer as the inscription on the books of the bank is controlling and all that he has to do is to prove that he is the party in whose name the securities are inscribed. He need not produce the receipt, as long as he can prove ownership. Interest is paid by mail to inscribed holders, unless otherwise instructed, and if desired, the Bank of England will invest in government securities, the interest accruing to holders of amounts of less than £1,000.

Under the terms of the recent War Revenue Act, Certificates of Indebtedness issued under the act of April 24, 1917 and any subsequent act or acts are made receivable in payment of income and excess profits taxes. There seems to be no good reason why they should not be made receivable also in payment of federal inheritance or estate taxes. In fact, it should be provided that not only Certificates of Indebtedness, but all government bonds issued under any of the war acts be permitted to be used to pay the transfer tax on the estate of a decedent. Leaving aside any consideration of whether it is wise or proper to utilize an increased inheritance tax as a war revenue measure and to place special penalties on the accident of death during the war period, as well as of the fact that no provision is made for an abatement, if an estate changes hands more than once during a certain period, the actual payment of the tax should be made as little onerous as possible and such as to cause the least disturbance in the investments of an estate. As the law now is, the tax must be paid in cash within one year after the death of the testator, which means liquidation, possibly forced, of a considerable portion of an estate, while if the option were given to pay the tax



in government bonds or Certificates of Indebtedness, there would be a great inducement to wealthy men and women to keep a considerable portion of their capital invested in such securities, which after their death could be utilized for this purpose. An additional market for government bonds would thus be secured. An interesting provision of the English practice is that bonds are accepted in payment of death duties, excess profits duty or munition exchequer payments only if the bonds have been held continuously since the date of the original subscription or for a period of not less than six months immediately preceding the date of death or before such excess profits duty or munition exchequer payments become due and payable.

One of the greatest handicaps to the successful flotation of government issues is a weak and rapidly declining market for current securities. People do not feel encouraged to subscribe even to national loans when they see their other investments shrink alarmingly in value and when they find it impossible to liquidate except at great loss. Of course, the government cannot artificially stimulate prices, but it can avoid doing such things as cause loss of confidence and destroy real values. All that is needed is proper coöperation by all governmental agencies in seeing that business and industry are not handicapped. Fair rates for railroads, proper methods of taxation, sympathetic consideration of industrial problems and difficulties are far better selling arguments for government bonds, than myriads of posters or the most inspiring of speeches.

It is not within my province to discuss taxation or express an opinion whether the program adopted by Congress is a wise one or not. I wish only to point out that the investing power of the country is dependent to a great extent upon its ability to earn and save and that anything which affects this or handicaps business is certain to react unfavorably upon issues of government bonds. It has been said, that in the final analysis the tokens of exchange which we call money are but a convenient method of evidencing what they represent, namely, goods and labor. If this is so, and it seems to me sound, it follows that taxation is but another term for forced labor or commandeered goods, and government borrowing the acquisition of these by the state, with payment deferred until a later date, and rental—that is interest—paid in the meantime. In some communities, the option is still given the taxpayer to pay his local taxes either

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in cash or by a certain number of days' work on the public roads, which is but an evidence of the recognition of this economic fact. There can be no doubt that the state has the right and is justified to commandeer or take without compensation a certain amount of the citizen's services or production, but it should not take more than he can spare without serious detriment to his standard of living or the proper development of his business. Otherwise, the result will be disastrous and its effect will be curtailment of industry, breakdown of efficiency, destruction of material prosperity and last, but not least, national discontent. Excessive or unscientific taxation is bound to have an unfavorable effect on government borrowing, as a discontented people will not respond readily to an appeal for its savings, to say nothing of the reaction on its ability to save. It has been said that the power to tax carries with it the power to destroy and that is certain to be the result of an unwise fiscal policy. Opinions may readily differ as to the amount to be raised by taxation, and the important consideration is not so much whether a larger or a smaller amount should be provided by a revenue bill, but the methods by which such revenue is raised. Taxation, in order not to interfere with government borrowing, must be based on sound and scientific economic principles and must not be haphazard in character to meet political or other considerations.

For the balance of its needs, after having recourse to taxation, the state must rely mainly on the sale of its bonds, that is, on borrowing the labor and goods of its people. This lending of their services and production must be voluntary on the part of the people, but the man who does not place at the disposition of the government at least part of the cash proceeds of his labor or goods is just as derelict in his duty as he who otherwise eligible avoids military service.

In order to make available the enormous sums which the war will require this country to raise by bond issues, the government must be prepared, if necessary, to monopolize the investment market. Not only can corporate securities not compete with those of the nation in their appeal for the savings of the people, but even state and municipal bonds, attractive as they may be on account of their exemption from taxation, must give way to the federal necessities. As long as governmental offerings are limited in amount and issued only at infrequent intervals, there may be room for the utilization of some of the national resources for other financial requirements, but

as soon as one government loan follows another in quick succession and for large amounts, the financial exhaustion is apt to be such, as to prevent the successful placing of other securities. It may be said that other borrowers can tempt money out of the pockets of the people by the attractiveness of the terms they offer, but even if this is possible, it should not be permitted in the interest of the country at large. The truest democracy lies in the subordination of the individual to the common good and the needs of the nation must be paramount. But how then are corporations and our political subdivisions to finance those needs, such as refunding and absolutely necessary addition, betterments and improvements which are imperative and cannot be postponed, if they are unable or not permitted to sell their own securities? It seems to me that there is but one logical answer to this question. The national Treasury may have to provide funds for this purpose just as it is financing the needs of our allies in this country. Our Allies must have the goods which we and we only can supply and our government is furnishing them with the credit with which to make payment, not only because that is the principal contribution which we can make at the present time to the battle against autocracy and brutality, but even more so because no such sum as they need could be found in the investment market of this country and what could be provided would be at such prohibitive cost as to interfere seriously with the financial stability of everything else. The same holds true of our own internal needs, and it is very apparent that heavy taxation and government borrowing has had its effect already upon the ability of our corporate enterprises to raise money. Look at the basis upon which prime railroad, industrial and public service bonds are selling, figure the cost of recent corporate financing and there can hardly be any doubt that the end is almost at hand, if not already reached.

The only securities which can compete are state and municipal bonds and that because they are free of all taxes. This is apt to make them more attractive to the large investor than government bonds when issued as entirely or partially taxable. Some means may have to be found to control the amount and time of such offerings and if the government should have to come to providing funds for the imperative needs of corporate enterprise, it may, even though not for the same reason, have to include in such a scheme provision for state and municipal requirements. Some may fear that the acqui-

ation by the government of corporate securities would be a step towards government ownership, but it does not appear to me that such reasoning is sound. These securities would be obligations, not stock, the relationship of the government would be that of creditor, not of owner, and the bonds and notes thus acquired would be in such form as to be readily salable after the war. In fact, it is probable that this could be done at a profit when normal conditions are again restored. Needless to say, the greatest possible safeguards would have to be adopted, so that there might be no abuse in securing government aid. If the time should come when such issues must be curtailed or even prevented, the most effective means of control and supervision would probably be through a central board, with power, possibly subject to review by the Secretary of the Treasury, to deal with this situation. Legislation may be necessary for this, but the main reliance would have to be placed on coöperation of public officials and of corporate managements and on the force of public opinion, which would probably be effective. This is not the time or place to discuss the details of such a scheme, and I desire only to point out that it is most important, if such a board should be appointed, that it consist of experienced men and be so constituted as to avoid any risk of outside considerations affecting any of its decisions of the important questions with which it would be called upon to deal. It would have to be assisted by regional and advisory committees, so that the best local opinion and technical judgment could be secured. All of the belligerents and some of the neutrals as well have found it necessary during the war to establish supervision and control over the financing of capital expenditures by public issues and to limit the demands for capital on their markets. If the war continues for any length of time, we also may have to do something on these lines in order to make all of our funds available for the government.

Few people seem to grasp how enormous our war requirements are. Congress has thus far appropriated over \$21,000,000,000, and it is estimated that over \$19,000,000,000 of this amount will be actually spent during this fiscal year ending next June. There is, of course, no such amount of money available in this or any other country and credit must be created to take care of these tremendous needs. We must win this war and make every sacrifice necessary to do so, but it must not be overlooked that there is a limit

to what even a country as rich as ours can provide. There should be, of course, no niggardliness or false economy, but on the other hand, extravagance must be checked and unwise expenditures avoided. This has a direct bearing on government loans. The people must feel that the money they provide is being spent wisely, otherwise they are apt to hold back. We must bear in mind that even our purse is not bottomless and our resources without end. There is a limit to what can be raised safely by taxation. There is a limit to the power of absorption of government loans. There is a limit to expansion of currency. As the war goes on, we must have recourse to all these methods of raising money, but the last must be used only on sound economic lines and with the utmost caution. We must avoid greenbacks, and any creation of additional currency should come through the federal reserve system, which is amply able to provide for a large expansion on a sound basis. Upon the present amount of gold held by the federal reserve banks about \$2,000,000,000 more reserve notes could be issued than are at present outstanding and even that great amount can be increased by the Federal Reserve Board by decreasing the gold reserve required. In order to thus expand our currency, eligible commercial paper and acceptances must be provided. We need additional currency to support our government loans, and the industries of the country and individuals must furnish the basis for the enlargement of our currency supply. Our people must learn to borrow and our banks to rediscount. This is the way to provide the credit needed by the government. It is a circle which produces results. Current savings are not sufficient; the people of the country, merchants, manufacturers, farmers and wage-earners, must pledge their future savings as well. They must borrow from their banks and invest in government bonds the funds thus received. The banks in turn must rediscount their customers' notes at the federal reserve banks, and additional credit facilities are thus created. The money thus furnished the government returns to the people through the channels of trade and thus becomes available again for further investment in government bonds. This process may be pyramiding, but it is economically sound, as it is self-liquidating as the people of the country repay their debts out of their savings and out of the proceeds of their production, be it labor or goods. To accomplish this, our people must be taught to save and avoid unnecessary expenditures.

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Our banks also must be educated to make full use of their rediscount facilities. Some of them still seem to think that to avail of the federal reserve banks' facilities is the same as taking out clearing house certificates in times of panic and that it is a sign of weakness if their statements show that they have rediscounted. I cannot emphasize too strongly the need of economy and of the public availing freely of the borrowing facilities which must be provided, as on these depend primarily the successful flotation of bonds of our government.

I have not ventured, nor do I propose to outline or recommend any definite plan for borrowing by our government or to express an opinion as to what the amount, rate of interest, maturity or time of issue of the next or future offerings should be. All these are matters which the Secretary of the Treasury must determine when the time comes with relation to conditions and requirements as they may develop, and I am confident that we can rely with safety in the future, as we have in the past, on his wisdom and good judgment and on that of his advisers. Not only can no hard and fast rules be laid down as to the exact form which government loans should take in this country, but it would be presumptuous for me to try to do so. All I have attempted in this paper is to present a brief outline of some of the factors which must be considered in connection with government borrowing, and certain principles which seem to me must be observed, not only to ensure a ready popular response to bond offerings by our government, but also to make it possible for the enormous sums needed to be forthcoming. These requisites, which, in my opinion, are of paramount importance, I would summarize as follows:

There must be no hampering of enterprise by unwise or too onerous taxation.

The public must not be discouraged and values must not be jeopardized by an unfriendly attitude by the government towards business. Capital as well as labor must be permitted to earn a fair return.

Issues of government bonds must not be too frequent and must not exceed the absorption power of the people. There should be, if possible, sufficient intervals between offerings to enable accumulation of profits, income and savings and to prevent exhaustion and lessening of enthusiasm among those actively engaged in placing the bonds.

A fair rate of interest must be paid and one not too much lower than can be secured from other prime and readily salable investments.

There should be no discrimination between large and small investors and, in so far as possible, the net return to all subscribers should be substantially the same.

The fullest possible facilities must be provided for borrowing by the people of the country and the federal reserve system must do its full share to make available its resources for this purpose.

The national government must monopolize the investment market if necessary, and is entitled to have its money requirements supplied before and, if need be, to the exclusion of those of private enterprise or even of states or municipalities.

Last and most important, the people must be taught to save and all unnecessary expenditures must be avoided. Thrift and economy must be the rule.



## LOANS VERSUS TAXES IN WAR FINANCE

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The fiscal problems of the war may be divided into those of a general and of a specific character. War expenditures can be met in three ways: by taxes, by loans, or by paper money. The specific problems have to deal with the nature and the details of each of these expedients; the general problem is concerned with the principles that underlie the preference among the respective methods. Inasmuch as paper money is by common consent to be regarded as the last resort, the general problem at issue here pertains to the choice between loans and taxes and the relative proportions in which each is to be employed.

If we look at the facts we observe a marked change in modern warfare. In former times, whether in classic antiquity or in the Middle Ages, the expenses of war were defrayed in large measure out of accumulated funds or treasures reënforced by taxes, and were reimbursed to the victor by the booty of war and the indemnities imposed upon the vanquished. Since the development of public credit, especially since the middle of the eighteenth century, loans have taken the place of the accumulated treasure and taxes have been utilized chiefly for the purpose of raising the interest on the war loans and of furnishing in addition a more or less considerable amortization quota.

The facts of the present war are no different. During the last fiscal year Great Britain raised by taxation slightly over 17 per cent of her war expenses; Italy, although also levying heavy taxes, has raised a still larger proportion than England by loans; in Germany only an insignificant fraction of the war expenses has been met by taxes; in France, as a result partly of the occupation of its territory by the enemy, the taxes hitherto levied during the war have not sufficed even to pay the ordinary peace expenses; while Russia has been in a still worse position. Although there is indeed a notable difference between the zero of France and the 17 per cent of Great Britain, the fact remains that in all the countries, with-



out exception, the overwhelming proportion of war expenditures has been met through loans.

The same thing is true of the United States. We have been told that our war expenditures for the present fiscal year will be about nineteen billions while the sum to be yielded by the new revenue bill is about two and a half billions or about 13 $\frac{1}{2}$  per cent of the whole. Even if there are included about one billion of peace expenditures and if we add that part of the previous tax revenue which might fairly be chargeable to the war or to war preparation, the proportion to be raised by loans will not differ materially from that of England. If we should exclude from the war expenditures the seven billions to be advanced to our allies, the amount to be raised by taxation, under the new revenue bill, would even then only be slightly over 21 per cent of the whole.

Several months ago an American economist<sup>1</sup> made the following statement: "I am strongly of the opinion that a great modern war, enormously costly as it is, can and should be mainly, if not entirely, financed from the proceeds of taxes collected during its progress."

Similar opinions have been voiced by others and have found expression in Congressional speeches, and a more or less faint echo of that pronouncement has even been audible in certain statements emanating from the executive branch of our government.

Why have the actual methods diverged so greatly from these suggestions? How does it happen that the statesmen and the legislators in every belligerent country, including our own, have done the opposite? Why, instead of raising from 50 to 100 per cent by taxes, has none of the belligerents raised as much as 20 per cent, or, at the outside, 25 per cent, of the war expenses by taxes? Shall we convict the European and American statesmen of folly and fiscal madness? Or is it perhaps true that the suggestions, so unavailingly made to the contrary, have been based upon an inadequate analysis?

This is the problem to which we shall now address ourselves.

### I. WHAT DO WE MEAN BY WAR COSTS?

The first point in our analysis is to ascertain what is meant by the costs of war. It is obvious that a distinction must be made between the money costs and the real costs of a war. The money

<sup>1</sup> O. M. W. Sprague, "The Conscription of Income," in the *Economic Journal*, March, 1917, p. 2.

costs of a war are the actual outlays of the government for war purposes, that is, the surplus above the general expenditures in time of peace, making due allowance for changes in the purchasing power of money. The real costs of a war, on the other hand, are to be calculated very differently. When the ordinary man speaks of wealth he thinks of accumulated capital. The more sagacious thinker, however, is aware that the real wealth of a community consists in larger part of the results of current production. Accumulated capital is of importance chiefly as an aid to current production. It has been calculated that the world is always within a year and a half of starvation. If current production were suddenly to cease, the world's stores of food and other products would barely suffice for eighteen months. A wealthy country is one where the consumption of the people is great and variegated and where the current production is so large that there will still be a substantial surplus susceptible of being converted into capital for future production and into an environment which will spell increasing welfare and civilization. A great war interferes rudely with the results both of past accumulation and of current production. The real costs of a war are to be measured by the diminution of the social patrimony and by the diversion of current social output from productive to unproductive channels, i. e. by changes both in the fund of accumulated wealth and in the flow of social income.

In drawing up the balance sheet we should have to put on the one side the diminution of the fund of wealth as represented by (a) the destruction of private property, (b) the loss of government accumulations, (c) the impairment of natural resources and (d) the decrease in the social output due to the reduction of the labor force by military service and the fortunes of war. On the other side of the ledger, indeed, we should have to put such capital items as (a) indemnities or booty, and (b) the acquisition of new territory; and on the income side, the results of (c) speeding up of production, (d) the more favorable economic situation attained by the political results of the war, and (e) changes in the methods of industry and the relation of capital and labor which may conduce to greater efficiency and increased output.

Although not all of these items are susceptible of being put in terms of dollars and cents, the real costs of a war may be characterized as the balance of the debit side over the credit side in the above account.

While this contrast between the money cost and the real cost of the war is important, it does not yet go to the root of the matter. In order to grasp what is meant by the real costs of a war, we must revert to the distinction familiar to the student, but so often neglected in popular discussion, between objective and subjective costs.

By objective costs are meant the costs incorporated in the goods, commodities and services that are used for the war, that is, the money value of all materials consumed and all services furnished for war purposes. In contradistinction to the objective costs, however, are the subjective costs. The essential idea here is that of sacrifice. The production of everything costs some sacrifice and all sacrifice involves pain, either the pain of doing something distasteful or of refraining from doing something pleasurable. Sacrifice in other words is involved both in labor and in abstinence. The surplus of results over subjective costs constitutes the welfare or the real wealth, both material and immaterial, of society. In a community based upon slavery or where the laborers, with an abject standard of life, are compelled to work sixteen hours a day, there may be a great surplus of production and in that sense great wealth. If, however, slavery is abolished or the laborers acquire a shorter working day and a higher standard of life, not only may there be the same output of material things as before, but there will be a greater surplus over subjective costs, and, as a consequence, an increased communal welfare and a higher stage of civilization.

As a result of the machinery of our social order subjective costs are commonly translated into objective and money costs. If a machine is invented which cuts in half the period needed for the production of a particular commodity, we speak of halving its cost. Instead of two men being required to accomplish the result, only one man is now needed. So far as the community is concerned, the subjective cost or sacrifice is reduced; and under a state of competition, this decrease in subjective costs will reflect itself in smaller objective costs and lower prices. So, in the same way, just as the greater efficiency of the laborer will result in a larger output of material commodities, the greater abstinence involved in the ordinary economy practiced by the members of a community will be followed by an increased accumulation of productive capital. The subjective costs involved in economy are undoubted, but the additional results which ensue from the practice of economy are so much

greater that there remains a substantial surplus. In other words net sacrifice or burden is diminished. The real wealth of a community depends upon net sacrifices or subjective costs. Where the same output is attended with less sacrifices we have prosperity. Where increased sacrifices result in still greater output we again have the prosperity that goes with lessened net subjective costs. When, however, economy changes into privation, the increased material results may be too dearly purchased: although there may be more material wealth for the present, there is less real wealth or welfare because there is more net sacrifice. So, in the same way, when increase of production is attended with the sapping of the vitality of the labor force, the nominal efficiency really becomes inefficiency and the greater material wealth of the present signifies less real wealth or welfare. The total net burdens upon the community are greater.

The important criterion in the economic welfare of a community is therefore the subjective cost or sacrifice. This is as true in war as in time of peace. Just as the subjective cost of an individual consists of the effort involved in labor and the abstinence involved in the foregoing of enjoyments, so the subjective costs of a community due to a war consist of the burdens of additional labor which it must expend and the diminished consumption of goods and services which it must forego. The objective costs of a war are material commodities and services; the subjective costs of a war constitute the real burdens resting on the community. The true costs of a war are the net sacrifices or subjective burdens which result from the transition from a peace economy to a war economy, and which are connected with the fundamental processes of production and consumption. They consist, on the one hand, of all the efforts involved in the transfer of enterprise and investments from the ordinary channels of production to the new fields of primary importance in the war. They consist, on the other hand, of all those efforts involved in the reduction and the change of consumption which will serve to counterbalance, in part at least, the inevitable reduction of social output. The net result measured in terms of aggregate sacrifice or subjective cost constitutes the real burden of a war. The problem that confronts us is to analyze the results of various fiscal expedients upon these changes in production and consumption from the point of view of the subjective costs or the real burdens resting on society.

## II. CAN THE COSTS OF A WAR BE DIMINISHED IN THE PRESENT OR BE SHARED WITH THE FUTURE?

After this preliminary explanation we may proceed to consider how the costs of a war can be diminished in the present and in what way, if any, they can be shared with the future.

So far as objective costs are concerned, it is manifest that they belong, for the most part, to the present. The services must be performed by men now living and the commodities consumed in the war must be produced before they are consumed. In several respects, however, the present may benefit at the expense of the future, even so far as objective costs are concerned. These considerations deal respectively with capital and with labor.

In the cost of production we ordinarily include sums set aside for depreciation of plant. It is possible, however, that the exigencies of the war situation may require such an immediate increase of output as to divert to current production the funds which would otherwise be devoted to the maintenance of plant. The result is that the future will possess a less effective plant than would otherwise be the case. Or, in the second place, the capital diverted to purposes of war production may become useless after the return of peace. Thousands of munition plants, for instance, may have been constructed solely for war purposes with machinery that it would be difficult or even hopeless to convert to other purposes. The capital which would otherwise be available at the conclusion of the war for peace production will to this extent have been lost. The production in the future will be less than would otherwise have been the case.

What is true, however, of capital, is equally true of labor. It is possible that the speeding up of production involves such a strain on the laborers, resulting from long hours, night work and unremitting toil, as to impair their health and transmit to the future a body of workmen less efficient than they would otherwise have been. It may take some time, either by the more careful handling of the then existing workmen, or by the immigration of men of a higher standard and stronger physique, before the balance is restored. And, on the other hand, while a diminished consumption is assuredly desirable during a war, the enforced decrease of consumption which may result from the fortunes of war may bring about such privation in the mass of the community as to sap their energies and reduce their future efficiency.

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{ In all of these ways, the burden of the present may be lightened at the expense of the future. There is more production, that is, more commodities and services now, but there will be relatively less in the future. Even in the case of objective costs the present may benefit at the expense of the future.

Subject to these limitations and exceptions, however, it may be said that the objective costs of a war are, in the main borne by the present. This is true irrespective of whether the expenditures designed to furnish these commodities and services are met by loans or by taxes.

When we deal with subjective costs, however, the situation is very different. Subjective costs may be reduced without any of the burden being shifted to the future; or they may be diminished while a part of the burden is borne by the future. It is obvious that neither of these results can be obtained by the process of taxation. The tax imposed upon the present generation may indeed have some repercussion upon the future. If an excessive tax is imposed upon capital, it may so reduce existing resources as to make future production smaller. Even if the tax is not excessive, the taxpayer, instead of decreasing consumption or paying the tax out of current income, may draw on the funds which he would otherwise have devoted to productive purposes. Or, finally, if an excessive tax is imposed upon incomes or profits, it may so diminish the tendency to enterprise that the baneful consequences will endure. In all these cases, however, although the future undoubtedly suffers, there is no diminution in the burdens that rest upon the present. The present taxpayers bear the burden, even though the future taxpayers also bear a burden.

Is the same true in the case of loans? Can the burden upon the present be lightened by the issue of government loans? Are the subjective costs or sacrifices of the community in any way lessened by government borrowing? This brings up for consideration the theory of public credit.

The theory of credit, as it has been worked out by economists, is in reality simple. Credit is a phenomenon or transaction in which a part takes place in the present and a part in the future. If I lend a man money, I turn over to him now a certain sum and he turns over to me in the future the equivalent of that sum. When the sum has been paid the transaction is complete. If we deal with public

instead of with private credit, the situation is identical. The funds are turned over now by certain classes in the community who loan the money to the government and the transaction is concluded in the future, when the taxpayers furnish the money to return it to the bondholders.

How does it happen then that the utilization of credit diminishes the burden upon the present? How can the subjective costs of the war be lessened for the community?

In the case of private credit the subjective sacrifice of the individual is clearly diminished. This is obviously true of productive credit for otherwise credit would not have become so vital a fact in our modern industrial life. The reason why the business man borrows today is chiefly because he thinks that with the borrowed funds he can secure such a return as to insure an enhanced profit even after paying all interest as well as repaying the capital borrowed. The credit, therefore, in so far as it enables him to purchase more goods with the same outlay, or—what is the same thing—the same amount of goods with a smaller outlay, lessens his subjective cost. Moreover, not only is his subjective cost or sacrifice less, but his objective cost or outlay as compared with the return, is also smaller.

Even, however, if we deal only with consumption credit, that is, with money borrowed for mere purposes of consumption, the borrower may enjoy a gain. Although he is thoroughly aware of the fact that he will have to repay in the future, with interest in the meantime, the precise sum that he now borrows, he is nevertheless anxious to borrow. This is due to two facts: an underestimate of the future, and the possibility of repayment in instalments.

His sense of immediate need is much stronger than his recognition of the sacrifice that he will have to make in the future in order to repay the loan. It is the same feeling that overcomes us when we compare the foregoing of a good dinner tonight with the foregoing of a good dinner a year hence. Our present sense of sacrifice, that is, our real subjective cost, is smaller in the one case than in the other. This is true even though we may, at the end of the year, regret our action. In ordinary cases, however, the action will not be regretted but will be repeated another year.

But, secondly, and more important, private credit diminishes subjective costs not only by the mere process of deferring payment



but by making possible repayment in instalments. The essence of the situation is found here in the gradualness of the repayment. The aggregate burden of gradual repayment is less than the sacrifice involved in providing for the whole of the original amount outright at once. The individual who borrows may incur a gain despite the obligation ultimately to return the same aggregate amount in the future. If he did not incur this gain he would not continue to borrow.

We are now in a position to grasp the social importance of credit. Credit increases prosperity. If used for productive purposes, credit, while indeed not capital, works like capital and constitutes an aid to production. It renders possible the same amount of output with a smaller cost or sacrifice. It accomplishes this by taking the funds out of the hands of those to whom it is worth relatively little and putting it into the hands of those to whom it is worth more because they make it yield more. The man who lends money at 6 per cent does so presumably because he has a surplus capital from which he is content to receive 6 per cent interest. But the man who borrows the fund expects to make more than 6 per cent interest and to retain the surplus in the shape of profit. Could the lender utilize the fund profitably in his own business he would not lend the fund. But even where credit is utilized for purely consumption purposes, it is equally advantageous, because by deferring payment and by rendering possible repayment in instalments rather than in a lump sum, it lessens subjective costs or sacrifices. The social utility of credit is therefore quite clear. It increases the wealth of the community by lessening the subjective sacrifices of certain individuals and putting at the disposal of the community funds where they will be utilized to the greatest advantage, thus decreasing costs and increasing output. Society as a whole is thereby enabled to employ those services which can be more easily dispensed with.

The truth of this assertion is not invalidated by the fact that credit may be abused. If the man who borrows at 6 per cent puts the money into a business which does not earn 6 per cent, the community, as well as himself, suffers for his mistake. So, in the same way, if an improvident individual borrows for consumption purposes and finds that he becomes more and more hopelessly entangled with the passage of time, he may find it impossible to meet the debt.



even in instalments and his easy-going reliance upon the future may cause his ruin as well as loss to the lender. Because, however, an essentially sound institution may be abused is no argument against its essential soundness. Credit, like speculation, would not have become the outstanding feature of our present economic organization if it did not fulfill a socially useful function. The modern economy is essentially a credit economy.

Public credit shares this character. The chief difference between public and private credit is in the relation of consumption credit to production credit. While the government, like the individual, often borrows for productive purposes, as for a government railway or a municipal subway, most existing national loans are the result of consumption credit. It is fairly well agreed that just as a prudent individual ought not to borrow for purposes of ordinary consumption, so the government ought not to borrow to meet its current expenditures. The real differences arise when we consider extraordinary expenditures.

There are three points in which public credit differs from private credit. In the first place, extraordinary expenditures for unusual consumption are not so apt to occur in the case of the individual as in the case of the government. Most individuals are able to provide a reserve fund against a rainy day. Government revenue, however, ought properly never to exceed current expenditures. As a consequence, when an extraordinary emergency arises, as a war, the utilization of consumption credit becomes legitimate. In the second place, the individual lives only his own life; if he borrows largely for consumption purposes he will not always find it easy to repay the debt. The state, on the contrary, is eternal. The government, accordingly, has a much longer time in which to pay off a debt. If, for any reason, it becomes desirable to postpone the payment of the debt to the distant future, the justifiability may be stronger in the case of the government than in the case of the individual.

In the third place, what seems to be consumption credit may, in the case of the government, partake of the characteristics of production credit. A legitimate war is either for defensive purposes, that is, to maintain the existence of the state, or for offensive purposes, in order to procure for the state certain territories or rights to which it thinks itself entitled. Since in both of these cases a foun-

dation is laid for continued or even greater prosperity, the expenditures may in a sense be called productive in their nature. Whether a particular war is actually of that character may be a question; but surely no nation will enter upon a great war unless it is deemed legitimate. And if the general sentiment of the nation justifies the war, if the ends to be achieved transcend the sacrifices that are incurred, the war expenditures may be considered in the broader sense of the term productive.

For these three reasons, therefore, public credit may be considered even more important than private credit. Just as private credit is socially useful or productive of wealth and welfare, so public credit may be at least equally beneficial. Its utility consists in the fact that, through borrowing from those in possession of the capital rather than taxing all the members of the community, whether or not they have the capital, it lessens subjective costs or sacrifices and puts at the disposal of the government those services in the community which can be most easily dispensed with.

It might be claimed that the advantages of private credit do not attach to public credit because in the one case we are dealing with different classes in the community, and, in the other, with the community as a whole. Why would not the same advantages be secured, it might be said, by taking from the possible lenders the same amount in the shape of taxes? This argument, however, is really invalid. For the situation contemplated is not only most unlikely but virtually impossible. Under every system of taxation which has hitherto existed—in democracies as elsewhere—we find some taxes at least levied on business, on consumption, on exchange and on other sources than wealth. Even, however, if the tax system were to be so changed as to consist exclusively of taxes on accumulated wealth and incomes, it by no means follows that the funds would be forthcoming from the individual taxpayers in precisely the same proportions that they would have been supplied by the individual bondholders. For some recipients of large incomes, at least, would surely give up a greater sum as an investment bearing interest, than they would hand over as a forced contribution representing a dead loss. The psychology of the situation consists in the difference of the reaction to a voluntary as contrasted with a compulsory act. Even if only a few individuals contributed it would still remain true that the utilization of public credit would

in this way put at the disposal of the government the services in the community most easily dispensed with. In order to invalidate this statement it would be necessary for the government to take by taxation from each individual absolutely everything above the necessary means of subsistence. Only then would this particular argument as to the advantage of loans over taxes lose its force.

But even in this most unlikely case, where precisely the same sums would be raised from each taxpayer that would otherwise be contributed by each bondholder, it nevertheless remains true that loans imply a lessening of subjective costs or sacrifices. For although the taxpayers of the future have indeed to repay the loan, they do not have to pay the amount all at once as would be necessary in the case of the sums being raised immediately by taxation. Just as in private credit the aggregate burden of gradual repayment is less than the sacrifice involved in outright provision of the original amount, so in the case of public credit the social sacrifice involved in the periodic payment of the smaller sum represented by the interest and amortization charge is less than the burden involved in providing the entire amount in a lump sum. The phenomena of interest and of credit, by their very nature, imply that the burden of a successive series of partial payments is less than the burden of the total original payment. Just as the individual who borrows may incur a gain, despite the obligation to return the same amount in the future, so the community which borrows may incur a similar gain. This net gain in the case of public credit is represented by the smaller burden involved in the amortization quota.

If, then, it is true that the utilization of public credit may involve a lessening of subjective costs or real burdens upon the community, can it in the second place accomplish this by transferring a part of the burden to the future?

It might plausibly be argued that this is impossible. It might be said, for instance, that while it is true that the future taxpayer suffers a burden in so far as he has to pay taxes in order to raise the funds which are due to the bondholder, the only result is a transfer of the burden from one class in the community to the other. The taxpayers, it might be said, suffer a disadvantage, but the bondholders who have their loan repaid to them secure the benefit. Since the benefits counterbalance the disadvantages there is no net burden.

This argument, however, is fallacious. When the bondholder

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invests in the loan he suffers indeed a sacrifice in the sense of giving up the funds which he might otherwise employ. This sacrifice indeed is compensated and more than compensated by a benefit. The benefit, however, that accrues to him is to be measured by the annual interest that he receives on the bond. If he had not invested in the government bond he would have invested in something else or would have allowed his money to remain in the bank. In any case he would simply have gotten interest on his capital; and it is immaterial whether his capital is represented by a deposit account in the bank or by a private security or a public bond. The benefit that the bond-holder receives in return for the sacrifice of yielding the money is the accumulated annual interest on the bond. By the time that the bond falls due there is no more benefit accruing to him. The bond is always salable at the market price. Even before it falls due, the holder can dispose of it and get as much as he could have gotten by waiting until the expiration of the loan. If, as often happens, the bond stands at a premium, he could even get more by selling it before hand. Or if he does not dispose of his bond, he can utilize it as security for a bank loan just as he would otherwise utilize an industrial bond or any other security. In reality, therefore, instead of speaking of a benefit accruing to the holder when his bond is paid off we ought really to speak of an additional burden or sacrifice imposed upon him. For now he will have the trouble of reinvesting the funds. Long-time bonds are in fact generally preferred by the investor in order to obviate this necessity of reinvestment. The fallacy involved in the contention that the sacrifice imposed upon the future taxpayer is counterbalanced by the benefit accruing to the bondholder thus consists in the failure to realize that there are no benefits then accruing to the bondholder. Whatever benefit may have accrued to him consists in the safe-keeping of his money and the annual interest that has been paid. When the bond falls due the benefits cease. There is, if anything, a burden rather than a benefit now accruing to him.

There is another fallacy lurking in the statement that the burden upon the future taxpayer is compensated by the benefit then accruing to the bondholder. There is indeed a burden upon the future taxpayer but not of the kind imagined. Public debts of large amounts are never paid in the manner supposed. When a public debt falls due it is not paid out of the proceeds of taxes levied

upon the taxpayers of that particular year. If the debt is not refunded, but actually paid off, it will be extinguished by utilizing the funds which have been accumulated for a term of years. If there is a sinking fund, the burden upon the future will be represented by the annual amortization quota. In such a case the burden will be borne not by the taxpayers at the time when the bond falls due, but in instalments by the successive annual taxpayers beginning with the year when the bond was first issued. The same is true if the bonds are serial bonds the instalments of which fall due periodically. In this case only the burden representing the last instalment will be borne by the taxpayers at the expiration of the loan. If we take the sinking fund bond as a type it may be said that the benefit accruing to the bondholder is represented by the accumulated interest and that the burden resting upon the taxpayers is composed of the entire debt service, that is the interest charge together with the amortization quota, since the interest charge figures on both sides of the ledger as benefit and as burden. The amortization quota is the net burden resting upon the successive contingents of taxpayers until the sinking fund is completed or the debt is entirely paid off. That this net burden upon the future may be outweighed—and in general more than outweighed—by the net benefit accruing to the present has been indicated above.

We may, therefore, consider it as established that it is possible, not only to diminish the subjective sacrifice on the present, but also to put a share of the burden upon the future. It has also been established that the device of public credit necessarily accomplishes the second result in effecting the first. The problem at issue is the best of making final settlement of the war bills of the government. This settlement must be made by taxpayers and it can be postponed. If the government borrows it obtains money from people who get a good investment and who are making a very slight sacrifice. The sacrifice on the part of a purchaser, rich or poor, of a liberty bond is much less than the sacrifice of a taxpayer who gives up his money without return. The sacrifice of the taxpayers who must pay the debt can be postponed and this postponement may involve the undoubted advantage of spreading large payments over a period of years.<sup>2</sup>

<sup>2</sup> Mr. Hartley Withers, who originally held this view, has been so influenced by the rather hasty pronouncement of some American writers that he has retracted. Cf. his *Our Money and the State*, 1917, p. 29. But even he balks at

Public credit, if correctly employed, may, in shifting a part of the subjective sacrifice to the future, lessen the total real costs of a war on the community as a whole, viewed as a continuing entity.

### III. OUGHT THE BURDENS OF A WAR BE SHARED WITH THE FUTURE?

Although it is possible as we have just seen to shift a part of the burden from the present to the future, the next problem is as to when, if ever, this is justifiable. The point at issue here, be it observed, is not as to the relative advantages of loans *versus* taxes, but as to the classes of cases when loans are to be permitted as a matter of principle. In order to solve this problem we need a more detailed analysis of public expenditures.

For our purposes all public expenditures may be divided into two classes: current and capital expenditures. Current expenditures are those incurred for carrying on the ordinary business of government while maintaining its property or plant at the customary level. Capital expenditures are those incurred for increasing the property or plant of the community.

Capital expenditures may again be divided into expenditures for self-supporting and for non-self-supporting purposes. Expenditures of the first kind are seen in the case of water-works where the revenues are expected to defray more than the cost. Here it is entirely legitimate to issue bonds, because although the burden upon the present is diminished there will be no burden upon the future. By the time the bonds expire, a sinking fund will have been accumulated out of the revenues which will also in the interval have provided for the payment of the annual interest. It is for this reason that in the city of New York, for instance, not only the water and dock bonds, but those issued for any municipal improvement the revenue from which will defray the interest together with an amortization quota, are by law excluded from being counted in the debt subject to constitutional limitations as to size. If such

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the proposition that public borrowing is always unjustifiable, and accepts it as defensible when employed for productive purposes (*Ibid.* p. 43). Had he pushed his analysis a little further he would have realized the fact that no distinction can be drawn between consumption and production credit, and that the economic utility of credit may attach equally to both forms.

improvements had to be paid for out of taxes they would frequently not be made at all.

Many capital expenditures are, however, incurred for non-self-supporting purposes. The funds, in other words, are spent for additions to the community plant or property from which no, or only little, money revenue is expected. The dividends are, in whole, or in part, of a non-material kind. Such expenditures may be further subdivided according as they are recurring or non-recurring. An example of the first kind is a schoolhouse. A schoolhouse represents an addition to the capital or permanent property of the community. Under the American system it is not used for purposes of revenue, as no fees are charged. In a growing city where population is continually increasing it is obvious that more schoolhouses will have to be built every few years and perhaps even annually. Since, therefore, the same capital expenditure will have to be made every year, or almost every year, it is proper that it should be paid for every year, or almost every year. In other words the cost of schoolhouses in a constantly growing community ought to be defrayed out of tax on the pay-as-you-go principle. The situation is, however, different with the other class of non-self-supporting capital expenditures, namely, those of a non-recurring kind. Take, for instance, the purchase by the government of the telegraph or telephone system with the intention of so reducing charges as not even to meet running costs. Or, better still, take the building of a great art museum in a city or the purchase of a comprehensive system of parks. In the ordinary course of events a considerable period would elapse before another art museum or another such system of parks will be needed. Since the museum or park will continue to benefit the community as a whole for many years there is evidently an impropriety in putting the entire burden upon the taxpayers in any one year. To attempt to do this would not only be inequitable in itself, but would also defeat its purposes; for the larger the expenditure, the more disinclined would the taxpayers of any one year be to authorize the outlay. The probable result would be delay, or even complete failure, to authorize much needed improvements. In the case, therefore, of non-recurring, non-self-supporting capital expenditures the utilization of public credit is clearly permissible.



There is of course a border line or twilight zone where the arguments as between loans and taxes are rather evenly balanced. Take the New York court house problem as an example. It is difficult to say whether this ought to be called a recurring or a non-recurring expenditure. A new court house is indeed not needed every year. It is only a few decades, however, since the present court house was rebuilt. The same is true of bridges in a rapidly growing community. More than a certain number of bridges will probably not be required for a long time. But in the interval new or better bridges may be needed every few years. Where the opposing arguments are so close it is evidently desirable to defray the outlay partly out of loans and partly out of taxes.

Opposed to the capital expenditures of government are the current expenditures. These may be divided into ordinary and extraordinary expenditures. Ordinary expenditures are those which are incurred for the ordinary work of government from year to year as it may be anticipated and arranged for in the budget. As to these there is no question but that they should be met entirely out of the proceeds of taxes. One of the glaring abuses of the old Tammany régime in New York City was the way in which they kept the tax rate down by borrowing money for the ordinary current expenditures; as, for instance, the issue of twenty-year bonds for the purchase of brooms which lasted only a few months.

Extraordinary expenditures, on the other hand, are those which cannot well be foreseen or predicted with any reasonable accuracy; as the result of some unforeseen contingency they are out of the regular order, that is, they are extraordinary.

Extraordinary current expenditures may, however, like the capital expenditures mentioned above, be subdivided into recurring and non-recurring expenditures. A non-recurring extraordinary expenditure is typified in the case of the Chicago or the Boston fire. Since the outlay needed to keep these communities alive, or to repair the ravages of the conflagration, may not be expected ever to occur again, or certainly not for a long future, it would be manifestly improper to saddle the entire burden upon the unfortunate taxpayers of that particular year. The probability is that if any attempt were made to do so the needed repairs could not be made at all, or certainly not to the extent that would be appropriate. Of a similar character would be the extraordinary expenditures occa-



caused by a great flood or famine in a country unaccustomed to such catastrophes.

On the other hand, there are certain classes of extraordinary expenditures the recurrence of which may be reasonably expected although the date of the recurrence is unknown. This would be the case with earthquakes in a country like Italy or famines in a country like India or tornados in some parts of the United States. In such cases it is entirely proper to accumulate out of the proceeds of taxation a fund which can ultimately be used for that purpose when the occasion arises. Since the contingency may occur at more or less periodic intervals it would manifestly be unwise to shift the burden upon the future; for before the future comes another contingency of the same kind may have occurred.

When finally we come to such expenditures as these of modern war the question of exact classification is attended with considerable difficulty. It is indeed true that as long as human nature remains what it is and the fundamental causes of an economic and racial character are not removed, every nation must look forward to periodic outbreaks of this scourge. Certainly there is nothing to dispose us to the belief that the history of the world is to be so totally changed in the year 1917. In a certain sense, therefore, the extraordinary expenditures of a war may be put in the class of recurring expenditures. The recurrence, however, of such a gigantic war as the present world conflagration cannot be regarded as immediate. It is to be expected that it will take at least several decades for the various belligerents to recover from the strain and loss of the conflict. In the meantime, whether it be one decade or several decades that elapse, the benefits, such as they are, in any particular country necessarily attach to the intervening years. And } all events, it is not legitimate, even if there are no benefits at all, } to put the entire burden upon those who happen to be taxpayers during the course of the war. When we speak of the distinction between the present and the future, it is not necessary to conceive of the future as the future generation or the future century. There is all manner of changes in the taxpaying abilities of the citizens in a century or even within a generation. And with reference to the particular circumstances of the present conflict, if this is a step to make democracy safe, it is certainly just that the coming

War Expend

Recurring

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decades which will enjoy the benefits of security should bear some part of the cost of preserving it.

The conclusion, therefore, would be that in the case of a great war it would meet all the demands of justice to put part of the burden upon the present taxpayers and to shift the remainder upon the taxpayers of succeeding years with the understanding that all the charges of the war will finally have been met before the period when the recurrence of a similar outbreak is within the realm of probability. This conclusion in other words shows the essential legitimacy of utilizing both loans and taxes in times of war.

#### IV. THE DISADVANTAGES OF LOANS

The net gain involved in public credit may be impaired or even converted into a loss in three ways: (1) if exclusive use is made of public credit; (2) if the system of taxation after the war is materially changed to the disadvantage of the community; (3) if public credit is so abused as to lead to serious inflation. Let us consider each of these in turn:

1. All credit rests on a substratum of cash. Private credit is an adjunct of capital but it must depend on capital. The loans that a bank can make ought never exceed a certain percentage of the reserves. The volume of credit can always be greater than the amount of the cash reserve; but it cannot safely be independent of that amount. In the same way the attempt to finance a gigantic war entirely by loans without any solid basis of taxation would also represent unsound finance. The resulting loss of confidence would manifest itself in a depreciation of successive issues of government bonds and would ultimately cause embarrassment or disaster. But just as a bank may issue several dollars of credit for one dollar of cash, so a government may borrow for war purposes considerably more than it raises by taxation with equal advantage to all concerned. To finance a war entirely by loans is inadvisable; to finance a war in large measure by loans is legitimate. Employed in moderation and based on a solid foundation of largely increased war taxation, war loans are advantageous in reducing war costs. But the foundation of taxation must support the edifice of loans. Unless taxes are levied to an amount at least necessary to provide for the interest on the new loan, as well as for a reasonable amortization

quota or additional sums calculated to sink the debt within a reasonable period, the advantages of war loans will disappear. This is the serious danger to which some of the belligerents, like France, Russia and Germany, have already succumbed in the present conflict.

2. If taxes during the war were to be raised entirely from those best able to pay, and if the tax system were to be so altered after the war as to bear with severity upon those less able to pay, the advantage of loans over taxes would be impaired. It might be claimed, for instance, that the ordinary system of taxation in peace time is influenced so largely by the richer classes that wealth escapes its share. As the result of a war, however, the wealthier classes will become more patriotic and will be more ready to contribute. Even if this should not be the case, the very immensity of the sums to be raised, it might be said, will make it impossible to secure what is needed from taxes on general consumption and will necessitate resort to taxes on wealth. To raise any part of war expenditures, therefore, by loans instead of by taxes simply means that the less affluent classes will ultimately have to pay more. This involves a serious social maladjustment.

It may be questioned, however, whether such an argument is not in reality illicit. For we have here a comparison not between loans and taxes but between two different systems of taxation.<sup>3</sup> It is conceded that if taxation after the war could be based upon the same general principles as taxation during the war, the entire argument would fall away.<sup>4</sup> But this, we are told, is exceedingly unlikely. The enthusiasm engendered by the war, which will make

<sup>3</sup> Professor Pigou, for instance, with whom this whole argument originated, does not compare taxes in general with loans in general, but taxes on the wealthy with taxes on the poor. "Under the tax method the rich and moderately rich really shoulder the whole burden of the charge that is laid upon them. Under the loan method they do not do this, because they are compensated afterwards through taxes laid for that purpose, partly on themselves, but partly on other and poorer sections of the community." *The Economy and Finance of the War*, by A. C. Pigou, 1916, p. 70.

<sup>4</sup> Professor Durand, for instance, tells us "If we could assure ourselves that the distribution of taxes after the war would be as the distribution of taxes during the war, there would be little choice between taxation and borrowing." *Financial Mobilisation for War*, papers presented at the Joint Conference of the Western Economic Society and the City Club of Chicago, June 21 and 22, 1917, p. 18.

the wealthy willing to pay greater taxes, will subside after the war.<sup>3</sup>

The retort, however, at once presents itself: what if peace taxes should be better than war taxes? It might plausibly be argued that during the enthusiasm engendered by a war the great mass of the people, and not only the very rich, might be willing to endure extra burdens; whereas after the return of peace they would insist upon a more equitable distribution of the burden. As a matter of fact the fiscal history of our own Civil War would tend to bear out this theory. The tax system during the Civil War was composed to an overwhelming extent of burdensome taxes on the great mass of the community. The income tax, for instance, was slight as compared with the tax on manufactured articles. After the return of peace, on the other hand, these burdensome taxes were removed one by one and the income tax was among the very last to disappear. Instead of the tax system after the war becoming progressively worse or more unjust, it became progressively better, or less unjust. The same thing is true of the fiscal history of other wars.

In truth, however, such an interpretation would be just as invalid as the preceding one. There is no necessary nor probable tendency in the one direction or in the other. Some systems of war taxation have been better, and some have been worse, than corresponding systems of peace taxation. There is nothing in the nature of war or peace which will fundamentally affect the situation. No one class in the community has a monopoly of loyalty. History does not show that the rich are more patriotic than the poor. The real forces which make for more equitable taxation are the growing democratization of the community with an increasing realization of the principles of justice. Modern systems of taxation, in war as in peace, are everywhere more equitable than former systems because of the gradual prevalence of these two factors. There is no warrant for the assumption that the return of peace will check this progress of democratization. There is no adequate foundation for the belief that in a democracy the fundamental causes which make for justice

<sup>3</sup> Professor Durand bases his whole argument on the assumption that the post-war taxes would be less equitable than the war taxes. He concedes that "this is not a necessary result," but he believes that "the great political power of the well-to-do classes would almost certainly enable them, if they sought to do so, to shift part of the burden on the poorer classes, and they would probably seek to do so." *Op. cit.*, p. 26.

taxation will be less strong in peace than in war. A faulty analysis of the history of taxation and of democratic progress is not a sufficiently firm basis on which to predicate the inferiority of loans.

3. The third disadvantage of loans is alleged to be the tendency to inflation. As to the dangers and shortcomings of inflation, the burdens of which are borne in large part by the less affluent classes, it is unnecessary to speak. That loans may possibly lead to inflation is undoubted; that loans necessarily lead to inflation or that they lead to more inflation than would be brought about by other methods of securing revenue, is quite another matter.

To what extent can it be said that loans lead to inflation? In the case of foreign loans the question can of course not arise so far as the home country is concerned. Domestic loans, however, may be derived from five sources:

(a) From the liquid or free loanable capital in existence. Large sums, the results of previous accumulation, are always found ready for investment in the financial centers. In the United States these are to a great extent loaned on the stock exchange and used for purposes of speculation.<sup>6</sup> The transfer of these funds from the stock exchange to the government will assuredly not lead to inflation. Rather, the contrary would be the case. *oh yeah?*

(b) From the surplus of current production. The annual surplus products of a community are ordinarily converted into productive capital through new investment. If these investments are turned into the channel of government bonds instead of in-  
vestments there is no tendency to inflation.

(c) From a change of investment. If investors are tempted to sell their foreign securities and to buy government bonds there is no tendency to inflation. If they sell their domestic industrial securities in order to invest in government bonds, there will even be a tendency to the contrary. For the throwing of so many domestic securities on the market will tend to reduce their value—leading to lower, rather than higher, prices.

(d) From anticipated savings. Many a citizen of moderate means will invest in war bonds paying for them by the fractional certificates which he laboriously purchases out of the savings due to decreased consumption or increased production. This will lead to inflation, but to the reverse.

<sup>6</sup> Professor Durand's criticism, *op. cit.*, p. 16, overlooks this important fact.

(c) From borrowing at the bank. It is only in this single case when the investor pays for his war bonds by borrowing from the bank, or when the bank itself subscribes to the war, that the undue extension of credit by the bank may lead to inflation. But, in weighing the probabilities, it must be remembered that this is unsound banking, and that every effort will be made to avoid it in a reformed system like the present. As a matter of fact we know that the banks have been urged to make only short-time advances on the new war loan. Moreover, even if this were not the case, the extension of credit to the bondholders would necessitate a partial withdrawal, at least, of credit facilities to the ordinary business enterprises, so that the inflation would be less than it really seems.

What we are considering, however, is primarily not whether loans cause inflation, but whether inflation is due to loans or whether there is anything peculiarly distinctive about loans in causing inflation. These considerations have almost entirely been overlooked in the discussion.

In the first place, there is no doubt that wars are always attended by inflation. But this inflation would ensue entirely apart from loans. The chief factors which explain the rise of prices during a war are the vastly augmented demands of the government, the dislocation of production coupled with the falling off in the social output, and the augmented supply of the currency. These are the fundamental causes which make for inflation and they will exert their effect irrespective of the choice between loans and taxes.

In the second place, it is a fallacy to suppose that if loans lead to inflation taxes will prevent inflation. Modern war taxes are to an overwhelming extent levied on business. The distinguishing features of our present system, for instance, are the high corporate income and excess-profits taxes. It is familiar to those acquainted with business conditions that many corporations whose profits are largely on paper, whose resources are heavily engaged, and who are anxious to utilize their profits in extending their operations, are even now preparing to borrow on a large scale from the banks or to issue short-time notes in order to pay their taxes. Were the war to be financed entirely, or to a large extent, by taxes instead of by loans this resort to bank credit on the part of prudently managed enterprises would be still further emphasized. There is consequently less difference than is commonly supposed between a resort to loans

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and a resort to taxes. Some of the funds may be borrowed from the banks in each case; and it is by no means certain that the borrowing is likely to be far more marked in the case of great loans than in the case of very high taxation.<sup>7</sup>

Finally it must not be forgotten that if there were no loans, or even insignificant loans, the tax system would, in all probability, not only be excessive in its burdensomeness, but, as we shall see, inadequate in its yield. With a failure of war taxation to defray expenditures the ultimate resort would then necessarily be to fiat money or inconvertible paper, which, as everyone concedes, would cause far greater inflation than anything else. Thus the failure to resort to loans in proper amount would almost inevitably, in a protracted contest, lead to the worst possible kind of inflation.

Is it not clear then that the relation between loans and inflation must not be exaggerated? Loans may indeed lead to inflation, but so may taxes lead to inflation; inflation is due primarily to other and more fundamental causes than either loans or taxes; and the attempt to avoid inflation by abandoning the use of loans will almost inevitably lead to far greater inflation in the end.

If, then, there is little reason for anticipating (1) any serious abuse of public credit, or (2) a fundamental and unfortunate change in the tax system after the war, or (3) any undue or peculiar tendency to inflation as a result of loans, it follows that a proper use of public credit may be of net advantage to society.

## V. THE ADVANTAGES AND DISADVANTAGES OF TAXES

Up to this point we have adverted to the advantages and disadvantages of loans and by implication have considered some of the advantages and disadvantages of taxation. It may conduce, however, to clarity of exposition to marshal here some of the arguments which refer particularly to taxes.

The first advantage of war taxation is its effect upon consumption. As we pointed out at the beginning, the important point in the economic life of a community at war, as at peace, is to have

<sup>7</sup> It is significant that Professor Pigou, who was the first to put forward the inflation theory in war finance, is careful not to limit this probable eventuality to loans. He tells us explicitly: "If, as is probable in the case of very large levies, their (the rich) borrowings for war loans and war taxes exceed their normal borrowings in times of peace, there is likely to occur a certain amount of currency inflation." *Op. cit.*, p. 76.



a surplus of current production. This surplus must be measured in terms not simply of material output, but also of subjective sacrifices. The outstanding fact in every great war is the sudden and sharp reduction in production. Unless the consumption of the community keeps this slower pace the result will be disastrous. For although the community can rely to a certain extent upon the accumulations of the past and can also, as we have pointed out, defer some of the sacrifice to the future, a large part of the burden must be borne at present. The current consumption of the community must be cut down to the measure of the current production if there is to be any surplus.

The advantage of high war taxes is that they may help to bring about this result. But while this is true, the effects of taxation on consumption must not be exaggerated. In the first place taxation is not alone in affecting consumption. Consumption may be influenced by legislative prohibition and by rationing. In truth, during the present war, these factors have been of much greater influence than taxation. In the second place taxes are not the only fiscal expedient which can affect consumption. One of the chief points in the recent issues of war loans, here as abroad, has been the appeal to patriotism and the facilities afforded for investment in the loans, to be made good by current savings. It is true that taxes involve a compulsory, and loans only a voluntary, appeal to saving. But it would be a mistake to overestimate the influence of the former and to underestimate that of the latter in reducing consumption.

In the third place the beneficial effects of taxes upon consumption may be seriously exaggerated. If, as is true, war taxes largely assume the form of taxes on business enterprises and corporations, there will be almost no influence upon consumption; and the little influence exerted on consumption may be outweighed by the possible injurious effects on production, thus reducing instead of enlarging the social surplus. Moreover, even as far as individual income taxes are concerned, the results are by no means certain. On large and very large incomes the tax is not apt to be paid out of current income at all. The ordinary man of wealth will be much more likely to draw temporarily upon his capital during the war than to reduce his personal expenditures. Again, while it is true that very high taxes on small or moderate incomes will check consumption the danger is that we shall cause not only sacrifices, but



real privation, the disadvantages of which may counterbalance the advantages of a reduced consumption.

While, therefore, high war taxes may tend in part to reduce consumption, the effects and beneficial consequences can easily be exaggerated.

The second advantage of high war taxes is that the actual burden in times of war is really less than it appears to be. A war gives unusual opportunities to make immense gains and the profits secured by the war contracts are apt to be more or less widely diffused throughout the community in the form of high wages and general business prosperity. It is for this reason that the tax on war profits, or on excess profits, has everywhere become a fundamental feature in the tax program. In the second place the higher price level due to the inflation that always accompanies a war makes a given tax a much smaller relative burden. And, thirdly, it is more economical to levy high taxes during a war when the diversion of current income to ordinary investment of capital is relatively small than to postpone the tax until a time when the need of capital investment will again become acute.

These are the undoubted advantages of high taxes. But over against the advantages must be set the disadvantages.

The first drawback is the inadequacy of taxation during a war. The protagonists of high taxation seem to think that the entire or well nigh the entire expenditures of a war may be met with taxation.\*

Even a superficial glance at the facts ought to show the baselessness of such an assumption. We do not venture to utilize here any figures as to national wealth or social income because of the worthlessness for scientific purposes of any such computations. But we should like to emphasize the fact that the limit of taxation is to be measured not by the social income, but by the social surplus, that is, the excess of the net income over the consumption of the members of society. This social surplus is very much less than is often represented. In England, for instance, where the tax on the moderate incomes has been raised to 25 per cent and on the larger incomes up to 42½ per cent, the net additional receipts from the income

\* So, for instance, Professor Durand says: "If during the war itself highly progressive taxes were levied sufficient to meet the war expenditures," *op. cit.*, p. 24.

The same thing is true of Professor Sprague and some other American writers. Professor Pigou, however, is much more cautious in simply advocating increased revenue from high taxation.

tax amount to about one billion dollars. Even if we assume that the recipients of moderate incomes could endure the privation of an additional 25 per cent of the income, thus doubling the returns; and if we further assume that on the higher grades it would be possible to confiscate the entire income beyond a small minimum, thus doubling or trebling the revenue, we should have as the conceivable maximum from the income tax in Great Britain between three and four billions of dollars. Again, if the excess-profits tax were increased from the present figure of eighty per cent, which yields about one billion dollars, so as to take in all of the profits, we would have another few hundred millions income. If, therefore, England were to tax the entire available social surplus through the highest possible income tax and excess-profits tax, the total revenue would be absurdly short of meeting the war expenditures which are already now over eleven billion dollars and which are gradually mounting. In order to meet even one-half of the war expenditures from taxation it would be necessary for Great Britain, in addition to confiscating incomes and profits, to impose immense burdens upon that part of accumulated wealth or property which is susceptible of sale abroad.

The figures *mutatis mutandis* would be similar in this country. In order to raise even one-half, not to speak of the total, of the nineteen billions required this year and of the still larger sums which may be needed as the war progresses, it would be necessary not only to take by taxation most of the smaller incomes and all of the higher incomes, but also to confiscate virtually all of business profits, and finally, after levying crushing taxes on consumption, to take such part of the existing private property of the United States as could find a ready market abroad. Even the mere statement of such a proposition carries its refutation on the face.

But if the inadequacy of sole reliance upon taxation is patent there are also well-founded objections to levying excessive taxes even short of this impossible total. Taxes may roughly be divided into taxes on wealth (income, property and inheritance taxes), taxes on business (taxes on profits, production and exchange), and taxes on consumption (import duties and excises).

The chief modern tax on wealth is the income tax. It is accordingly entirely proper that in time of war the principal reliance should be based on this source of revenue with a very much higher

Excessive taxes  
on consumption  
a war

graduated scale of progression on the larger incomes. But entirely apart from the extreme advocated by some of confiscating all incomes over \$100,000<sup>9</sup> there are at least four dangers in excessive income taxes.

1. The administrative difficulties will be greatly increased. It is as true of the income tax as of the arithmetic of the customs that two and two do not always make four. Excessive import duties induce smuggling; excessive income taxes engender evasion. With such a delicately adjusted machinery as in the case of our income tax it is to be feared that excessively high rates will cause not only a disappointing yield but also an increasing inequality as between individual taxpayers.

2. If the rates are too high the tax may act like an excessive consumption tax and by pressing unduly upon the margin of comfortable existence cause great privation.

3. If levied chiefly upon the higher incomes it may seriously trench upon the sum ordinarily devoted to the educational, philanthropic and religious institutions and thus cause widespread injury to the immaterial interests of the community. This objection has only in part been removed by the recent amendment to our income tax law.

4. Excessive taxes on incomes will deplete the surplus available for investment and interfere with the placing of the enormous loans which will be necessary in any event. It might be replied to this last argument that the more you raise by taxes the less will have to be raised by loans. This does not, however, meet the point. For if the taxes are so high as to discourage industry they will obviously dry up the source of future incomes and thus deplete to that extent the surplus which would otherwise be available for future loans. Entirely apart from that fact, however, high taxes will interfere with loans in so far as the loans are financed even temporarily by the banks. If a would-be investor borrows from a bank, the amount of his credit will be in a certain proportion to his estimated profits. Every dollar's diminution of his prospective income will cause several dollars' decrease in the amount which he will think it prudent to

<sup>9</sup> This has been done by Professor Sprague in his address before the American Economic Association. *Papers and Proceedings of the Twenty-ninth Annual Meeting of the American Economic Association, December, 1916*, p. 211. Similar propositions were made in Congress.

borrow or which the bank will think it safe to lend. If, therefore, the income tax is so high as seriously to deplete his investing surplus, it will cause a far greater falling off in the amount which he can subscribe to the loan. It is significant that this is the chief argument that has weighed with the Chancellor of the Exchequer in England in refusing to increase English taxation.<sup>10</sup>

Excessive taxes on business again may have all manner of injurious consequences. Taxes on war profits are indeed not open to the same objections, but our tax on excess profits is far more than a tax on war profits. When they are too high, they tend to check the needed transfer of industry and of investment to war purposes just at the time when new enterprise is desperately needed. Although our tax can by no means yet be called excessive, it is well known that in several important cases it has already begun to exert such a repressive effect.

The evils of excessive taxes on exchange and consumption are so familiar that they need not be recounted here.

It will be seen, therefore, that the dangers of excessive taxes are not to be overlooked. The anti-social consequences of excessive taxation are perhaps more to be emphasized than the similar evils of excessive loans.

It is important, moreover, that the public mind should be informed not only as to the dangers of excessive taxation, but also as to the inevitable failure of exclusive reliance upon any single group of taxes. It would be in the highest degree unfortunate if through emphasis upon such slogans as "conscription of wealth" and the like, the general citizen body acquired the feeling that war taxation meant immunity for themselves. Just as the war from a military point of view can be won by putting forth the united efforts of the nation, so the war can be won from the fiscal point of view only by reliance upon the ability of the entire citizen body whether rich or poor.

<sup>10</sup> Mr. Bonar Law has stated this several times, the last time on August 13, 1917: "I quite admit that in financing the war the government has to get the largest amount out of taxation which is compatible with maintaining the financial security of the country; but I have said many times that there comes a limit at which if you keep on increasing taxation, you might give up all hope of raising money by loan. It is obvious that if you tax to such an extent as to destroy the financial position, you must abandon all hope of loans." *Parliamentary Debates*, vol. xcvi, p. 944, 945.

Let there be no misapprehension about the thesis of this paper. We are by no means opposed to high taxation. On the contrary we believe it is essentially sound finance to raise far larger sums from taxation in war than in peace. We have no lance to break for the exaggerated policy of France or of Germany. But in considering the limits of taxation one is apt to overlook obvious facts. In 1913-1914 Great Britain raised by taxation 163 million pounds; in 1916-1917 514 million or 351 million pounds additional, i.e., about 215 per cent more. The United States raised by taxation in the four years 1912-1915 an average of 648 million dollars annually." The War Revenue Act of 1917, which is expected to yield \$2,510,000,000, increases the taxes by 387 per cent. What it really means to quadruple the burdens of taxation is not generally recognized by those who speak so glibly of defraying the entire expenditure of a war from taxation. That we have reached the limit, however, is by no means sure. The practical situation that confronts us is this. The additional war expenses this year will be about nineteen billions, of which about four billions are still to be provided. It is, in our opinion, entirely feasible to raise more money by taxation, perhaps another billion or one and one-half billions from the income tax, the excess-profits tax and new excise taxes. The time may even come when we shall have to secure a still further revenue from taxes on accumulated wealth. But even with all these resources it is indubitable that an important reliance will continue to be, as it ought to be, on loans. The enthusiastic plan, so hastily advanced by some American economists of financing the war "mainly, if not entirely" from taxation, and even the fifty-fifty per cent program originally advanced by the executive, are so far beyond the practicable or economically defensible that they may safely be neglected.

## VI. CONCLUSIONS

The conclusions from the above analysis are as follows:

1. Government loans are indispensable to a sound war finance. properly used, they tend to lighten the burden of a war.

" 1912.....	\$632 millions
1913.....	662 millions
1914.....	672 millions
1915.....	629 millions

2. To attempt to finance a war exclusively through loans is short-sighted.

3. To attempt to finance a war exclusively through taxes is suicidal.

4. War taxes should be large and immediate, but should never be stretched beyond the point where they begin to lessen the social output, to hamper the transfer of pre-war to war production, or to press unduly on desirable consumption.

5. War taxes must be high enough to assure a solid foundation for the loans and to ensure a rapid payment of the debt within a relatively short time.

6. At the outbreak of a war, and during the early period, very much greater sums ought to be raised by loans than by taxes.

7. As the war proceeds a continuously larger amount can and should be raised by taxation, although at no time will the government be free from the necessity of relying to a considerable extent upon the use of public credit.

In the Civil War, as in some of the belligerent countries today, it is undoubted that too little was raised by taxes. At present it is probable that even England could safely raise somewhat more than the existing 17 or 20 per cent of war expenses by taxation. We could profitably go somewhat higher. But between the 25 or 35 per cent, which even we have not yet begun to reach, and the 80 or 100 per cent which has seriously been suggested in this country, there is an immense chasm. Let us, indeed, be careful to avoid the dangers to which France and Germany have succumbed, but let us not be led by a faulty analysis or a misplaced enthusiasm into the devious by-paths of unsound finance and of hazardous economics.

## THE RELATIONSHIP BETWEEN LOANS AND TAXES IN WAR FINANCE

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I shall discuss the relationship between loans and taxes in war finance solely with reference to the present case of the United States. I shall also assume that the people are prepared to adopt that financial policy, however burdensome it may be, which will enable us at the earliest possible moment to place an adequately equipped army in the field and sustain our allies with abundant supplies of food and military material. That this is a well-founded assumption general acquiescence in the selective draft affords convincing evidence. This policy, however strongly advocated by military experts, would hardly have been adopted if the experience of other countries during the present war had not made clear to the ordinary layman that it was the wise course to follow. Similarly, I feel certain that if the people become convinced that a particular method of financing the war—financing it mainly by taxation, for example—would contribute to the speedy and effective mobilization of the economic forces of the country for war purposes, they would adopt that policy in the same spirit which they have manifested toward the conscription of men for military service.

On the other hand, if it makes no particular difference in the conduct of the war whether the bulk of the funds is secured through loans or taxes, if it is a purely financial question, it is altogether unlikely that the people would be ready to meet by taxation a large proportion of the cost of the war. Revenue from taxation during the war, slightly exceeding the amount which will be needed in subsequent years of peace to meet ordinary expenditures and debt charges, would be the policy which almost certainly would be adopted. On purely financial grounds, the amount of taxation during the war should be somewhat greater than in the following years of peace since patriotic fervor lightens the burden upon the taxpayer, and during the continuance of a war business is somewhat more active than during a series of years good and bad in times of



peace. The special profits reaped by those engaged in industries stimulated by war are also a proper field for special taxation of the English excess profits variety.

The equities of the situation as between those who serve with the colors and those who remain at home would justify placing the entire burden of financing a war upon those who remain at home, but this in itself is not a consideration which can be relied upon to develop general willingness to make the sacrifice which the policy of taxation would impose upon the community. But suppose the people become convinced that the amount of taxation levied during the war has an important bearing upon the speed and effectiveness of our preparations for the conflict. Under present arrangements, four billion dollars of our estimated expenditure during the current fiscal year are to be derived from taxation and fifteen billion dollars from loans. It is quite possible that this is a wise proportion, but if it were clear that some other proportion would better serve the purpose in view, is it to be doubted that the people would favor its adoption? The proper, and also the feasible relation between loans and taxes in war finance is surely that proportion which will most speedily bring about the mobilization of our economic forces for the effective prosecution of the war.

Without prejudging the question, and simply as a concrete method of approach, I am going to contrast the situation as it is and may be expected to develop under the financial arrangements which have been authorized, with the situation which might be expected to develop if the proportions between loans and taxes had been reversed, and fifteen billion dollars were to be raised through taxation and only four billion dollars by means of loans.

In one very fundamental respect the two policies would have similar consequences. The expenditure of nineteen billion dollars means at the present level of prices the employment of something like a third of the capital and labor of the country in providing goods and services for the government. There will consequently not be enough labor and capital available to produce the customary quantity of goods and services for civilian consumption and for the usual annual additions to the capital equipment of the country. This radical, and one is tempted to say ruthless, change in the relative proportions between individual and national consumption will also be accompanied by very great changes in the quantities of



the various things to be consumed. Some things will be wanted in much greater quantities, while in the case of others the demand will be greatly reduced. Those engaged in industries, the demand for the products of which is stimulated by the war, will prosper, and labor and capital must be transferred to them from other industries which must necessarily become less than normally active. This transition from a peace to a war basis is necessarily a painful process to many engaged in well-established and prosperous businesses and to their employes. There is a natural inclination to make the change slowly, with the least possible disturbance and loss to those concerned. But what if military exigencies will brook no delay? Clearly this is our present situation. There is urgent need for the production of more food, ships and military material of all sorts. No sacrifice is too great which will accelerate and increase the production of these vitally important commodities. Unhappily, the process of transition from a peace to a war footing is proceeding slowly with consequent danger of increasing the loss of life at the front, the prolongation of the war, and in the last analysis, increasing the money cost of the conflict. Supplies of efficient labor and of material for the war industries are not being enlarged to anything like the maximum possible extent. The fundamental cause of this unsatisfactory situation is not far to seek. It is because the demand for labor and materials continues intense in industries, the products of which are valueless for war purposes.

If the policy of financing the war mainly by means of taxes had been adopted, the civilian demand for the products of all our industries would have been greatly diminished. Owners would have been eager to convert their equipment to war uses, and much labor would have been eager for employment in the war industries. It is the fundamental defect of the loan policy in the present emergency that it exerts a far less effective influence in these directions. The loan policy would be quite as effective if all subscribers to liberty bonds made payment entirely from current income saved while the proceeds of each loan were being expended by the government. In this event the civilian demand for goods and services would decline roughly in proportion to the increased government demand. A large part of the funds secured through war loans does, of course, represent current savings, but a very considerable part consists of borrowings from banks involving the expansion of bank credit.

There is an increase in the total amount of purchasing power with no corresponding increase in the volume of goods offered for sale. The civilian demand for goods is consequently not directly reduced by the full amount of the loans. People endeavor to maintain their accustomed scale of expenditure though it is manifestly impossible. The attempt is frustrated by the rise of prices. The expenditure of a given sum of money procures the proceeds of the employment of smaller and smaller amounts of labor and capital.

The rise of prices which results from the loan policy of war finance is of course particularly burdensome to persons in receipt of stationary incomes and adds greatly to the money costs of a war. But these are minor defects in comparison with the check which it places upon the rapid mobilization of the labor and capital of the country for war. The continued civilian demand only slightly checked by exhortations to economy deludes producers into the belief that business can continue as usual for a long time, if not during the entire course of a great war. They continue to buy materials, retain their labor force by the offer of higher wages, and endeavor, often with entire success, to produce accustomed supplies of goods, regardless of their utility for military purposes. So far as materials are concerned, the government, or those having government contracts, may meet the situation by the offer of higher and higher prices, and where this course is only partially successful, may resort to the commandeering of essential products. As to labor, the offer of higher wages is not a sufficient means of securing an adequate and efficient supply and commandeering is out of the question. When steady employment at rising wages is offered at home, it is hardly to be expected that workmen will flock to the centers where war industries flourish. Moreover, the abnormally high wages that are offered all too frequently seem to be accompanied by, if not to occasion, a positive loss in efficiency. To sum up, although the total output of industry is now perhaps greater than ever before, the proportion of it which is of military value is far less than is urgently needed, and far less than its possible maximum.

As evidence of the large possibilities of securing additional labor and materials for war purposes, a few concrete examples of conditions in particular industries and occupations will perhaps be helpful. Consider first the case of the pleasure automobile. There has been little if any diminution of the consumption of gasoline, and

very few chauffeurs have been dispensed with. Chauffeurs as a class have mechanical instincts and many possess not a little mechanical skill. All of them could be usefully employed in connection with our shipbuilding program or in allied occupations. This is not a question to be determined by the ability of the employer to pay the wages of the chauffeur. The country needs the discontinuance of such use of this part of its limited supply of labor. In any event it will be discontinued in the course of time. Far more progress would already have been made in this direction if the War Revenue Act recently passed by Congress had included a tax of \$10 a month rising by stages to \$50 a month after next March on all employers of chauffeurs for other than commercial or professional purposes. A heavy tax on gasoline used in running pleasure cars would also be serviceable here and at the same time effect a desirable economy among those who drive their own cars.

Turning next to the sugar industry we find that manufacturers of candy and soda fountain syrups have been running full blast all summer, while economy in the household use of sugar has been urged and in some measure practiced. Subjected recently to temporary curtailment of production and threatened by the necessity of closing down permanently, manufacturers have protested on the ground that thousands would be thrown out of work—this at a time when even were sugar as plentiful as sand, it may well be doubted whether these businesses should continue at the pre-war level of production. A heavy tax on candy and syrups would have conserved the supply of sugar and might also have led to a gradual contraction in production, rather than the sudden cessation of operations which now threatens. In this instance, the loan policy cannot even be credited with bringing about that gradual transfer from a peace to a war footing which is so desirable when it does not interfere with military preparations.

Consider next the wool situation. Apparently the government will require practically all the available supply, yet having civilian orders on hand, the mills have not yet begun to curtail operations. Curtailment of production will apparently come in a series of jolts and perhaps with a crash. Had very much heavier income taxes been imposed the civilian demand for cloth would have been materially restricted. Mills would probably have gradually curtailed the scale of their operations relieving the labor market in some measure and conserving the supply of wool.

Finally consider the case of coal. Production is on a greater scale than ever before, yet the supply is inadequate and its movement taxes our transportation facilities. Price fixation is a further complication. The situation is so intolerable that the Priority Board will probably be forced to take drastic action limiting or cutting off altogether consumption in industries which are valueless for military purposes. By this method it will accomplish something which might have been brought about in a far more gradual fashion by taxation which would have placed a check upon individual consumption, and consequently the demand for coal in civilian industries.

When subjected to the test of contributing to a maximum of military preparation in the shortest possible time, the revenue measure recently passed by Congress leaves much to be desired. In making this statement it is proper to add that it should not be taken as a criticism of the patriotic and generally speaking wise work of the members of the committees which framed the measure. The possibilities of taxation as a means of hastening effective military preparation have never, so far as I am aware, been given thorough-going consideration. Another war revenue measure must, however, be framed in the near future, and so it will perhaps be worth while to consider with this object in view some of the modifications which may well be made in the present law.

The very heavy rates of taxation imposed upon large incomes are entirely proper upon purely financial grounds; they have, however, little or no significance with regard to military preparation, since the money taken by the tax gatherer from such persons would in almost every instance have been invested, most of it no doubt in liberty bonds. The more moderate rates on incomes of less than say \$100,000 are quite as likely to occasion a reduction in the accustomed amount of savings as in consumption. A tax of twenty-five per cent, as in England, on entire incomes of \$12,500 with suitable super-taxes on income in excess of that amount would be financially desirable and might also be expected to bring about not a little curtailment in the consumption of goods by individuals. But income taxes alone would not accomplish the end in view. The expense and administrative difficulties of the tax forbid its application to the great mass of people. They, and in fact the entire community, can be reached by taxes on consumption, and it is consump-

tion that must in some way be checked either by the unsatisfactory method of rising prices alone, or by a combination of rising prices and of taxation. Every commodity or service in connection with which much labor and material valuable for military purposes are employed would be a proper subject for taxation at the present time. We as a people are in the situation of an athletic team training for a contest. But there are so many of us that we lack the compelling unifying influence which is present in a small group working for a common purpose. Through taxation we can gain this unifying influence. It is, for example, not difficult to convince most men that their chauffeurs might be more usefully employed, but for any one individual to act in the matter would obviously amount to so little that he ordinarily does nothing. Let virtually everyone dispense with chauffeurs and the value of the proceeding as a whole would lighten the feeling of deprivation to each individual. Again, in the case of sugar we might tax all sugar, or since a part of it is a necessary food, we might tax only the articles of luxury in the production of which it is an important constituent. A tax of twenty-five per cent or even fifty per cent on the retail price of candy would conserve sugar by bringing about a reduction in one of its relatively unimportant uses.

Many other commodities and services should also be taxed, but these instances will sufficiently illustrate the two advantages which may be gained. In some cases, a tax on tea for example, revenue would be the primary object, in others, as the tax on chauffeurs, the setting free of labor or conserving materials for war uses.

Of course the burden of heavy consumption taxes would fall unequally upon different people and classes. The same statement may be made regarding the effects of the rapid rise of prices occasioned when wars are financed by loans. It may, however, be urged that people endure the burden which comes upon them from rising prices very much in the same resigned fashion that they accept the infirmities of old age, while analogous burdens due to specific taxes might occasion serious discontent. I should feel inclined to agree, but at the same time I should add that I feel even more certain that if the people are convinced that heavy consumption taxes would contribute to preparation for the war and hasten its speedy conclusion, they would not flinch from the burden.

## SHIFTING THE WAR BURDEN UPON THE FUTURE

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Congress has already appropriated nearly nineteen billion dollars for expenditures of the current fiscal year which ends June 30 next. In addition, it has authorized contracts of over two and a half billions for which it has not yet made appropriations. Part, though not all, of the money will be needed on these contracts this year, so that our total expenditures in round numbers will be twenty or twenty-one billions if no more are authorized. Our federal revenue laws have been revised recently so as to raise about three and three-fourths billions through taxes. If they are not further revised, this will leave sixteen or seventeen billions to be raised through loans, or a ratio of loans to taxes of about four and one-half to one. We have already subscribed about six billions in loans so we still have to secure about ten or eleven billions in loans and nearly all of the taxes. This means that about fourteen billions, or two-thirds of the total amount necessary, are yet to be secured after payment of subscriptions to the current bond issue.

It is extremely difficult for us to appreciate what it means to raise twenty-one billion dollars in a single year. This is over twenty-five times our ordinary federal expenditures prior to the war, it is twenty times our national debt of a year ago, it is over seven times our national debt at the end of the Civil War, and it is over four times the combined cost of all of our five wars beginning with the Revolution. Furthermore, it is more than all of the Entente Allies spent in either the first or second year of the war, it is four-fifths as much as Great Britain, the largest spender, has used in three entire years, and it is two-thirds of the combined expenditures of all the central powers in the same three-year period.

But these stupendous figures do not become real to us unless we consider them in terms of the sacrifice which they will mean. The most accurate estimate of the national income of this country puts it at about thirty billions in 1910. The most recent estimates are based upon this, and, after allowing for the increase in prices and



for increased production due to more general employment, greater population, speeding up, etc., they put the present national income at forty-five to fifty billions. Our present plans call for a diversion of over two-fifths of this amount to war purposes. To put it in another way, the twenty-one billions mean an average of \$200 for every man, woman and child, or \$1,000 for every family of five in the United States. Reduced to these terms, we can begin to visualize what a tremendous burden this involves, though few of us can comprehend that it is really to fall upon ourselves.

Although many have not thought of the burden in very concrete terms, some others have realized that twenty billions is an enormous sum to raise and that taxes twenty-five times as heavy as heretofore would be very grievous; hence many plans have been suggested to obviate the use of such taxes and to avoid or lighten the burden through borrowing. There are few fallacies so plausible and yet so harmful and general throughout the land as those involved in the idea that we can shift the larger part of the burden of this war to the future by substituting loans for taxes. One reason that this idea is so harmful is that it contains all the evils of a half truth; another and most important reason is that we are confused with money and monetary terms so that we do not see clearly the real things for which money stands.

When we stop to think we know that it is not twenty-one billions of dollars which our government wants ultimately, but twenty-one billion dollars worth of commodities and services. Our national income does not consist of forty-five or fifty billions of dollars of gold, silver and paper, but of that many dollars worth of wheat, lumber, minerals, clothing, automobiles, etc. There are less than five billions of actual gold, silver and paper dollars in existence in the United States. These dollars are the counters in terms of which the real things are measured and by means of which they are exchanged more easily. For our present purposes to have gold, or silver, or paper is not to have anything of value in itself, but merely to have a claim upon real things for which it can be exchanged. It is obvious that our government needs money in order that it may exchange it for men and commodities, for it is with these that it must fight the German military forces. It is obvious, also, that it must have these men and commodities now. Munitions of 1930 and men not yet ~~men~~ cannot be hurled against the enemy's lines. The burden of

furnishing all of these things must be assumed now, it cannot be put off till the future.

If we could borrow from other nations, we might fight the war with what they loaned to us and we ourselves go ahead consuming what we produce, as we have been doing before the war. In that case, we could shift the paying of them, that is, the burden of the war, to the future. But there are no other nations who can lend to us at this time; we ourselves must raise an army, equip it and keep it supplied. Not only must all of this be done at home, but in addition, we must help to feed and equip our allies. None of this can be left to the future.

Of course the next generation will be injured because of this war. Billions of dollars worth of labor and food and steel and other materials that are now absolutely destroyed in war are diverted from the construction of railroads, irrigation systems, manufacturing plants, improved roads, houses, all of which might have aided our descendants and made their lives fuller and happier. If a man's property is destroyed his children receive an impaired heritage, both he and they suffer. Our descendants must suffer in this fashion because much of their patrimony is being destroyed. But we cannot, as a nation, postpone our burden if we would, nor can the future help us. Then why delude ourselves with thinking that it can?

But while it is impossible for this nation to shift part of the burden to the future, it is possible for certain individuals and classes to shift parts of their shares on to other individuals or classes, both now and in the future. This is true whether all of the means to prosecute the war are secured through loans or taxes, or both. Let us consider the two means of taxes and loans, respectively. Realizing that everything needed must be secured now, everyone will concede that each individual should pay his just share. This will mean a much greater part of large incomes than of small ones, but we shall not here go into details of exactly what constitutes a just share. We merely assume that each should pay his just share when what is just has been determined.

We may assume first that each individual pays his share in the form of taxes. These taxes might be paid in money or in kind. In either case, what the payer gives up and what the government gets ultimately is services and commodities. For this payment, the government gives the payer a tax receipt. Suppose on the other



hand that each individual gives up to the government his just share in the form of a loan. This is exactly the same amount as we supposed in the first case that he gave up in taxes. In this case, as in the other, it may be in money or in kind, and, similarly as in that case, he really gives up and the government gets services and commodities. The only difference in the two cases is that in the first case he has a tax receipt and in the second he has a government bond, a promise that he shall be paid back with interest.

But let us consider the paying back process. If the future taxes are levied justly, each one (or his heirs) will be taxed just enough to pay his own bond and whatever interest it draws. That is, he merely transfers money from one pocket to another and his bond is paid. When he lent to the government and thought he was better off than if he had paid taxes, he deluded himself.

It is obvious that if anyone pays less than his just share, someone else must pay more. But when a war comes unexpectedly it may find many individuals unprepared to pay their just shares of a new and large burden. It may be best all around to permit some to assume the burden of others temporarily, either wholly or in part. This may be done whether the government supplies its needs through loans or through taxes. Because this is so apparent in the case of government loans, we shall consider only the case of taxes. Assume that the government is to secure everything through taxes. Assume two men of equal ability to pay taxes. At the time the war burden comes A has a large shoe plant turning out thousands of pairs daily. B has a smaller plant, but he is building a large additional one to construct which he is borrowing, besides turning into it all the proceeds from his existing plant. Let us assume that neither has other abilities or assets. It is obvious that A can use his proceeds above living expenses, either to pay taxes or to buy bonds. The amount now available for government use is probably greater than his share of the government requirements, at least, he probably can make it easier by reducing his ordinary consumption of luxuries and necessities. But it is not so convenient for B to pay taxes. The only way he can do so is to give up his new plant which would involve great loss, or to borrow more. He ought to be able to borrow and A is in a position to lend to him. That is, A advances B's taxes, and now, when B's larger plant is turning out its full quota and his debt for construction is paid off, he concludes the transaction by paying

his debt to A. In other words, for the time being, B shifted his tax burden to A and later B repaid A with interest and each profited by the transaction.

In this last assumption, the government secured everything through taxation, nothing through loans. But this same thing might have been accomplished through government loans. Assume again A and B as in the last case. The government offers a bond issue. A is in a position to buy bonds, but B is not. In buying more than his share of bonds, A is really lending, through government agency, to B, who is not now in a position to buy his share. Now observe the process of paying off these bonds. Though A and B were equally able when the war came on, B is now more able to pay taxes because A has lent the proceeds of his plant while B has not only loaned but has put his proceeds into a bigger plant so that he now has more property and a greater output than A. Both A and B must pay taxes to redeem the bonds. If the burden is distributed equitably on the basis of our former assumption, A's taxes will be enough to pay himself, not all the government owes him, but just the amount which would have been his just share of taxes plus interest on the same, if he had paid taxes in the first place instead of buying bonds. B's taxes will pay the rest due A and they will be the exact amount which B would have paid in taxes plus interest, had he paid taxes in the first place instead of letting A buy bonds equal to the share of both. In so far as the government can make easier advantageous credit transactions by itself assuming the borrowing agency instead of leaving the transactions to be arranged between individuals, there is a further net gain. This is the real essential economic justification of government loans.

We shall take up later some of the offsetting losses occasioned by the borrowing plan. But before we go further, we should note again that whether the government supplies its needs through taxes and thus necessitates private borrowing, or whether the government itself does the borrowing, the shifting of the burden is not from the present to the future so far as the nation as a whole is concerned. All the shifting now and in the future is between individuals. If there were no offsetting losses the total net burden would probably be a little less in the present because of the government loans but the national burden of the future would hardly be affected one way

or the other. It would be merely a matter between individuals; what was given up in taxes by certain persons would be received by part of themselves in payment of bonds and interest. It is conceivable that this redistribution of income might be either advantageous or disadvantageous from a national standpoint.

This point may be made more vivid if we consider the case of Germany who has been unable to borrow much from outside her own borders. Because of this fact many said at the beginning that Germany could not last long. But she has demonstrated that she is a powerful enemy with an unconquerable fighting machine just so long as she can provide men and materials. Having mere gold and silver is a secondary matter, but having the necessities of war when needed rather than in the future has been her chief strength. True, she has floated huge internal loans but that has not postponed the national burden of carrying on the war, it has merely been a shift between various citizens of the empire as becomes obvious if we consider what would happen if the internal debt were repudiated later. In such a case the taxpayers would retain the money which would otherwise be transferred from them to those who owned bonds. In so far as the taxpayers and bondholders are identical, the transfer of money would be first to the government and then back to the individual. Of course, the same reasoning applies to the United States.

The advantages of accommodation which government loans permit are very great in the beginning of a war when readjustments are being made and while a new tax system is being made productive as Professor Adams<sup>1</sup> points out. Later they lose much of this advantage and they involve certain important disadvantages as compared with taxes. One of the most important of these disadvantages is that the burden of taxation is apt to be distributed more equitably if the taxes are levied during the war than if after its close. The well-to-do classes have practically always controlled legislation directly or indirectly and they are much more likely to be willing to assume their just burdens during the war while the spirit of patriotism is almost universal and while others are giving their lives to the country. After the war closes they are much more apt to resort to indirect taxes which fall upon people in proportion to what they consume rather than in proportion to their ability to pay.

<sup>1</sup>See pages 28-30.

In this connection I should call attention to Professor Seligman's<sup>2</sup> statement that the experience of the Civil War showed that the reverse is the case. It is true, as he stated, that many of the excise taxes were repealed before the income tax which fell more heavily upon the well-to-do. But the significant fact which he did not mention is that the high tariff duties, which during the war were merely compensatory, were retained for half a century after the war and during all of that time formed the bulwark of federal revenues as well as a source of privilege to the industrial entrepreneurs. Few warnings of the Civil War are more important in the present case than that suggested by this experience. In the violent readjustments which the close of the war will necessitate, we are almost sure to have a widespread demand for protectionism and the revenue needs of the government are apt to be used as a strong argument for this form of subsidy to the few at the expense of the many. Hence, there is a triple reason for high taxes during the war: first, the patriotic call which will mean more equitable distribution than later; second, high prices during the war which cut down the standard of living of the masses but bring greater profits to the employers of labor and the large scale producers and sellers of war necessities, thus enabling them to pay high taxes; third, the demoralization of readjustment following the war which will bring an immense decline in profits and ability to pay excess profits and other taxes and which will at the same time cause great numbers of soldiers, munition makers and others to be taken off of the government payrolls and put upon those of readjusted private industries.

A still further and indeed the most important advantage of taxes over loans is that, if levied properly, they are much more likely to cause everybody to economize in accordance with his ability to do so. If one has to pay \$100 or \$1,000 in taxes, he is much more apt to economize immediately than if he lends that much to the government thinking that he has an investment which will not only bring interest but which will be paid back later. He forgets, or never realizes, that he may have to repay himself later, and hence is inclined to save less than if he had made a gift or paid a tax to the government. Furthermore, he knows that if he has unexpected financial needs in the future he can sell his bond and get his money back, or that he can borrow on it at the bank, so there is not th

<sup>2</sup> See page 72.

necessity for him to economize as in the case of taxes. We shall attempt to show a little later the extreme necessity of widespread and stringent economy.

All economists, including the few who advocate a large proportion of loans as compared with taxes, as well as the many who advocate the reverse proportion, agree that the borrowing of money from the banks to buy bonds, or the borrowing upon bonds as collateral, or the purchase of bonds by the banks is certain to cause inflation. Furthermore, all agree that this inflation, by causing a rapid rise in prices, injures very seriously nearly all wage-earners, salaried employees and all receivers of relatively fixed incomes, but benefits those who pay these wages and other relatively fixed incomes, and especially those who have large quantities of commodities to sell. In other words, inflation means a redistribution of income and property, mostly in favor of the active business class and to the misfortune of the large laboring class. But the details of inflation, how it is brought about and how it works, I shall leave for others to discuss. It is no use it to say that the evils are extremely great as our own experience in the Civil and Revolutionary Wars and as experience in scores of other cases has abundantly proved.

The idea that we can put off a large part of the war burden till the future and the policy of huge loans and inadequate taxes which encourages are largely responsible for our failure to economize as we should. As already mentioned heavy taxes would immediately bring home to us the necessity of economy. But as it is, we still continue to preach "business as usual" and many others think the war can be financed by some sort of financial legerdemain. We do not begin to realize the extent of the sacrifice which it demands.

Let us recall that after allowing for speeding up, increased production, more general employment, higher prices, etc., the best estimates of our national income place it at forty-five to fifty billion dollars, and that Congress has authorized expenditures of two-fifths of this income for war purposes this year. Let us recall, too, that this income and these expenditures are not dollars but that they are for commodities and services. The government cannot by any magical hocus-pocus get twenty billions worth of commodities and services unless we give up that amount and live on the remainder. If business continues as usual, it means that we demand the same

necessaries and luxuries as before, that the same men and farms and manufacturing plants are necessary to produce these goods as before and that the government can secure nobody to fight in its armies or to make ships, munitions and other extraordinary things needed to carry on a war. It is possible to carry on a huge extra undertaking like the war only by diverting a large part of our energies from the usual channels. Everyone who does not save, who still demands the same goods as formerly, prevents the labor which produces what he consumes from being diverted to government use. Those who give up luxuries and near luxuries permit the labor and materials and plant used in their production to be diverted to making necessities of life and munitions and other commodities needed to supply the military forces. We have already shown that this diversion must take place now, to put it off till the future means to lose the war. If any person does not do his share of saving, someone else must save more. But laboring under the delusion that this burden may be shifted in large part to the future, very few of us have begun to economize to the extent of two-fifths of our income, which is the average amount that must be saved to carry out present plans.

It is estimated that heretofore we have been saving five or six billion dollars annually and with it constructing new capital in the form of additional railroad, irrigation, manufacturing and other plant. If all of this construction could be and were stopped and the labor and commodities which have hitherto gone into it were turned to direct war purposes, we would have to reduce our ordinary consumption by only fifteen billion instead of by twenty or twenty-one billion, that is, by only a third instead of by two-fifths.

But it will be said that not everyone can reduce his consumption by a third. This is true of the masses with small incomes, but it is not true as many seem to think, that the rich can bear all or nearly all of the burden of twenty billions a year. Their total income does not amount to that sum. Dr. E. Dana Durand, to whom there is no more competent authority in the United States has calculated that only one-tenth of the entire national income is received by those having incomes in excess of \$25,000. In order to secure two-fifths of the total national income it would be necessary to take 100 per cent of all of the family incomes in excess of \$1,500. Even if allowances are made for recent changes in American incomes it is apparent that the rich alone cannot finance the war. While i



is true that they can make much the largest contributions per family and even in proportion to their total incomes, still it is necessary that all classes shall economize.

Besides the misconceptions mentioned above, there are many others current throughout the country. Among them we shall take time to mention only a few of the most popular and plausible ones. We are told upon all hands that, of the twenty-one billions, seven billions are not our own expense but are for loans to the allies. So far as the war period is concerned, these loans are to all intents and purposes our own expense. Like ourselves, the allies want and must have commodities, not gold and silver, and we can furnish these to them only by doing without them ourselves.

In connection with our loans to the allies there is another common fallacy in the implied advantages which we are to receive because all of these loans will be spent in this country. It is true that this will mean more work and a greater demand for our commodities and this is probably a good reason why those who are thus specially benefited should subscribe more liberally for bonds. But for the nation as a whole this is not an advantage but a distinct disadvantage. We do not at the present need more work, rather we need more help to perform the enormous tasks before us. The pity is that the allies and ourselves cannot spend this money to advantage in other countries so that we might have that much additional aid in overcoming the common enemy.

Another misconception is common among those who urge the withdrawal of savings bank deposits to buy bonds as well as among those who urge insurance and other investing companies to accept government bonds in payment of premiums. To withdraw savings from a bank means that the bank must withdraw loans to others; to pay life insurance premiums with bonds means almost the same thing. Unless these and similar transactions cause the party at one end or the other to cut down his consumption in order to replace amounts thus withdrawn, no service has been done the national cause. To thus economize is just what the man who uses bonds to pay life insurance premiums or other obligations is not likely to do. It is because he doesn't want to make the extra sacrifice that he wants the privilege of using bonds as money. Of course, to borrow from a commercial bank to buy bonds is one of the quickest methods of causing inflation. The same result happens if the bank itself

buys bonds. With 4 per cent interest on government bonds, and even higher rates probable if the war continues much longer, there will be a terrible strain upon savings banks. The recent bond issue is causing a large withdrawal of savings deposits and banks themselves are subscribing to the bonds to prevent even greater withdrawals. As time goes on this is apt to become worse instead of better and with it inflation will grow apace.

If the reduction of consumption by two-fifths or a third of what we have been used to could be quickly brought about voluntarily or by a proper system of taxation, we could finance the war, that is, secure the men and commodities with which to prosecute it, without any process of inflation. But when these commodities and services cannot be gotten by voluntary saving and when there is too much objection to adequate taxation, then the government must resort to borrowing. If this is done upon a large scale, as in the present war, the banks are gradually forced to lend directly or indirectly and also to buy bonds themselves, in order that bond issues may not fail and that the government can get what it needs. Mr. Schiff<sup>3</sup> openly advocates this increase of credit by the pyramiding of deposits, because, as he states, the people cannot or will not save enough.

But the heaviest taxes that are likely to be adopted will not prevent the consumption of many luxuries and near luxuries. Let us take one example. Even though it does have an effect, the present tax of 3 per cent, or even a tax of 25 per cent, on pleasure cars will not prevent many from being bought, although reduced incomes will have more effect. All unnecessary demand for such luxuries keeps from the army needed men and munitions. Why should not the government decide as in the case of coal, sugar and other commodities, who has a legitimate need for automobiles in war times and absolutely prohibit others from buying them? Many other similar examples suggest themselves to everyone. We might well go much further than we have in this direction; ordinary economic forces usually work fairly well in the long run, but they are too slow in many cases in an emergency like the present. Of course we would not disregard entirely the cautions given by Prof. H. C. Adams.<sup>4</sup>

Inasmuch as the problems of proper taxation are discussed

<sup>3</sup>See page 49.

<sup>4</sup>See page 28.



more at length elsewhere, we shall not go into details here, but we will call attention to the many cries that heavy taxation will hurt business, dry up the source of revenue and even cut down production at the time when it is most needed. This is a very serious matter in some of its aspects, and much care should be taken in levying proper taxation. Our present excess profits tax is far from perfect and has many wrinkles which need ironing out. But most of those who criticize heavy taxes upon business do so almost indiscriminately. It is unfortunate to hurt any business man or employe, but it is for the national good, in fact, absolutely essential, that unnecessary production should cease and that those engaged in such should go into the military service, or furnish supplies for the military, or do the work of others that the latter may help the government. The adjustment is painful and it should be handled with discretion but it should be forced. Those industries which minister to war needs will have such greatly increased demands that there is little danger that they will be taxed to death. Of course, such taxation is theoretically possible, but taxation which leaves 10 per cent or more net profit should not discourage the investment of capital in these lines nor the largest possible output, if the entrepreneurs of America have the least spark of unselfish patriotism. It would be all the more desirable to invest in these industries if others less useful were taxed more heavily. Existing tax measures intend to leave most of our war industries a much larger net profit than 10 per cent, though it is true that many difficulties, and particularly the matter of obsolescence, must be worked out.

We would not deny the function of credit which Professor Seligman<sup>8</sup> emphasizes so much, in fact, we have already illustrated its advantages under certain conditions, but we think he lays too much stress upon subjective as opposed to objective costs. Where what is borrowed is destroyed as in this war, we think it important that people realize what are the objective costs, and that such a realization will have an effect upon subjective costs. If people are ignorant the immediate subjective costs of indirect taxation may be less than half that amount of direct taxation. But if they appreciate the facts, the subjective costs of the two taxes will be reversed and society will be better off for the change. Bond issues which cause inflation really amount to unduly heavy indirect taxes upon

<sup>8</sup> See page 58 *f*.

the masses, not in accordance with their ability to pay, but in proportion to their expenditures. It is important that both financiers and the masses realize this fact so that subjective costs shall harmonize with the public welfare.

In concluding let me give two homely illustrations of the main points which I have been trying to emphasize. The United States is so large that we cannot see it as a unit, hence let us consider a ranch or a plantation which is more or less isolated and self-sufficient. The father and his sons, perhaps the families of several sons, besides many helpers, are actively engaged in producing a living for the group. After the necessities are provided for, some can devote themselves to producing comforts and even luxuries. Suppose the neighboring ranches or plantations are beset by a powerful enemy and this ranch goes to their rescue. Would anybody argue that they can put off any of the war burdens till the future? Or would anybody urge that those who were making candy or silk dresses or pleasure cars, or other unnecessary things, should continue as usual? Would not all energies be directed to the most direct war purposes, and would not everyone reduce his demand for luxuries, and even for ordinary necessities as much as possible?

To take the second illustration. Let us look at our national income of 1910 as 30,000,000,000 gallons of milk instead of that many dollars worth of commodities and services. Suppose an increase of five or ten billions up to 1917, due to actual increased production, and a still further increase to forty-five or fifty billions due to pouring in of water. Suppose at this time a war makes it necessary that the government have twenty billions of this total of fifty billions. The government may take different methods to secure this amount. It may get it by taxing or by borrowing. If these methods cause a corresponding reduction in consumption of milk, this can be accomplished successfully, but if one method, say borrowing, caused a dilution of the milk, difficulty arises. If such evasion of economy is attempted, the government is forced to pour in water or to have others pour in water for it. By pouring in thirty or thirty-five billions of gallons there is made a total of eighty or eighty-five billions. The government can then take out thirty or thirty-five billions and get twenty billions of real milk and the public can have left for civil needs fifty billion gallons of what it calls milk but which is really very much less. A reduction of consumption has thus been forced,

not by taxes but by inflation. Those who received a stated income still receive the same number of gallons (or dollars) or even possibly somewhat more, but the food value (or purchasing power) is much lessened.

These two illustrations bring home three important points: first, that the burden of the war cannot possibly be put off till the future; second, that the burden is enormous and inevitable and cannot be met by any financial makeshift, but demands unusual and stringent economy; and third, that attempts to shirk economy through excessive loans will not make the burden less but will distribute it much more inequitably.

As we have intimated above, the fundamental thing in our war finance is the stimulation of production for war which is possible only through reduction of consumption. This reduction is even more important practically than a total increased production, because it has much greater possibilities within a short time. If we will cease to delude ourselves about the possibility of shifting a large part of the immense burden upon the future, or of avoiding it in other impossible ways, and really recognize the task as it is and undertake to grapple with it, we can avoid some of the terrible mistakes of the past. This means that we should now raise larger amounts by taxation, and that an even greater proportion should be so raised hereafter as industry becomes more adjusted to the changed conditions. Furthermore, economies should be forced by governmental suspension of unnecessary production.

The present limit to taxation is psychological. That limit may well be pushed much further if there can be a general appreciation of the real ways in which the war may be financed. The danger is that in trying to escape the discomforts of the great economies which are absolutely necessary, we shall, through excessive borrowing, throw an increasing amount of the financing upon the banks. There is little likelihood that the government will use paper money; that has been too much discredited. While that method might have been resorted to in Civil War and previous times when note issue banking was common, in the present the much more subtle and effective method is through the pyramiding of deposits, as actually advocated by Mr. Schiff.<sup>6</sup> By trying [to escape thus, the nation shall not escape, but shall be forced to even greater sacrifices. In

<sup>6</sup> See page 49.

fact, it shall force its masses, who can least afford to economize, to a greatly reduced consumption through a further decreased purchasing power of the money medium.

To thus secure the reduction necessary to win the war through inflation is most inequitable and probably the most disastrous method in the long run. "To make the world safe for democracy" is flaunted upon our banners. It is a worthy battle cry in our supreme struggle with Prussian autocracy. But in the adaptation of means to ends it should not be disregarded at home at the fountain head of democracy.

## DO GOVERNMENT LOANS CAUSE INFLATION?

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In the cynicism born of world collapse, George Brandes has lately revived an epigram imputed to Frederick the Great: "I begin by taking. Then I always find men of science to prove the justice of my claim." There is danger of scholarship becoming thus "official" in a democracy no less than in an absolutism. Public opinion cracks as sharp a whip as any despot, and the applause of the market-place is as grave a menace to independent thought as the favor of the throne.

In public finance, war or peace, the treasury is always beset by two opposed forces. On the one hand, there is opportunism and practicability—opportunism in using the stress of war need to accomplish ends in doubt; practicability in meeting the fiscal strain with least trouble and dislike. On the other hand is economic theory and fiscal law—rugged and dure, straight and narrow, serving the public need with measures conceived solely with respect to fiscal principle, and hewing to this line even with struggle in making and difficulty in carrying out.

Certainly no budget has ever been wholly the one thing or the other—utterly neutral in convenience nor wholly virginal in theory. Even a time-serving finance minister must occasionally relapse into science without knowing it, and the scholar enthroned in the parquet cannot have all literally as his text-books set forth. But the varying degree of emphasis is sufficient difference. In the one case convenience is the end in view with theoretical excellence a by-product; in the other, fiscal theory holds mitigated by practical concession.

The rôle of the student critic called to pass judgment upon these alternate policies is at least in one respect plain. He should insist that each policy stand firmly on its own merit, and that if non-fiscal considerations are to affect the course this should be clearly set forth. Most of all, should he resent the use of bad scientific reasoning in praise of one procedure or in blame of the other.

A glaring instance of this misuse is the outright resistance to funding in war finance on the score that it makes inevitably for inflation and thus for high prices—or more briefly the inflation argument against war loans. Both as a melancholy example of scientific lapse, and as a mischief-making error in the actual conduct of war finance, it has seemed worth while to examine this claim.

It is possible to trace with some exactness the growth of the doctrine. Without returning to shadowy beginnings, the first explicit phrasing of the argument appears to have been made in 1915–1916 by an English economist of note, Mr. A. C. Pigou, professor of political economy in the University of Cambridge in two public lectures delivered in Cambridge, in articles contributed to the *Contemporary Review* and, more formally, in a little book on “The Economy and Finance of the War.”

The preface of Pigou's book is dated October, 1916. In December, 1916, at the meeting of the American Economic Association held in Columbus, Ohio, an eminent American economist, Professor O. M. W. Sprague of Harvard University, presented a paper on “Loans and Taxes in War Finance” wherein, quite independent of Pigou's exposition, the inflationist argument against funding, foreshadowed in certain of the speaker's earlier writings, was set forth with detail and vigor. Admitting that “it is not absolutely inevitable that war finance based on borrowing should cause a general rise in prices,” Professor Sprague noted that “It is significant, however, that whenever governments have resorted to this policy prices generally have manifested marked and continued upward tendency.”

Professor Pigou's and Professor Sprague's views, spoken with some measure of scientific restraint, were received with attention, if not assent, within expert circles. They were given circulation and vogue by the Minnesota “memorial of American economists to Congress regarding war finance,” an attempt to determine congressional action upon the then pending war revenue bill by arraying the body of academic economists in support of such propositions as:

It may be necessary for a month or two at the outset to issue a limited amount of bonds, pending the collection of increased taxes, but beyond these, which might well be made repayable within a year, no necessity for bonds exists.

Thus far the inflationist doctrine had circulated as an academic hypothesis. In April, 1917, it was unexpectedly translated into the

higher altitude of state policy by a sentence of President Wilson's message to the special session of Congress:

It is our duty, I most respectfully urge, to protect our people so far as we may against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

## II

The inflationist argument has been too often set forth to need restatement here. Its drift will be recalled by the summary of a competent student, Professor Sprague:

Many subscribers [to the loans] borrow from the banks the funds required to meet their commitments, pledging other property and even the war loan itself. The banks adopt a liberal patriotic loan policy and also subscribe largely on their own account. These transactions, the borrowing from banks and the investments by banks, occasion expansion in the volume of credit, both in the form of bank notes and of deposits, and are the most potent single cause of the general advance in prices during periods of war.

If we follow the first impulse of the scientist and turn from outright hypothesis to attempted proof, the inflationist contention encounters rough sledding. No one has to my knowledge suggested that verification be found in past war financing, nor is there likely to be such claim. For even remotely parallel conditions we should be obliged to turn to the two great wars of the past hundred years—the Napoleonic struggle and our own Civil War—and here the relative crudity of banking operations in the one case and the all-eclipsing effect of fiat issues in the other put any kind of helpful comparison out of question. Such warrant as may be found for the doctrine is to be sought in the fiscal developments of the past three years—in the longer experience of Great Britain, in the more recent history of the United States.

As far as Great Britain is concerned, there has been an extraordinary rise in general prices and there have been extensive funding operations. The *Economist* index number which in August, 1914, stood at 2698 had risen in August, 1915, to 3296, in August, 1916, to 4372, and in August, 1917, to 5658—a relative change of 110 per cent. As to funding operations, the net borrowings including loans to allies and dominions, from August 1, 1914, to August 25, 1917, were roughly twenty billion dollars as compared with somewhat more than six billion dollars raised by revenue.



But the English situation has been affected by the issue of treasury notes "to a much greater extent than was required to take the place of the gold which has been called in from circulation" and by a great increase in the coinage of silver. Moreover, English borrowings are an intricate complex of war loans, treasury bills, exchequer bonds, war savings certificates and bank credits against ways and means advances.

During the past months there has raged in English financial circles, technical and academic, a controversy recalling in variety and intensity the classic bullion debate of a century ago, as to whether inflation really existed in England, whether it was imputable, wholly or in any part, to public borrowing, and whether this consequence, if existent, was avoidable or inevitable. The result has been, if not to leave the main issue in doubt, at least to make it impossible in our present knowledge to determine the respective contribution of the several factors involved.

In the United States we have witnessed a hardly less sensational rise in prices, the Department of Labor index number of wholesale prices standing at 100 in 1916 as compared with 81 in 1915 and 80 in 1914 and advancing thereafter to 139 in April, 1917. But during this period the country was still in neutral state, and there was no resort to large scale borrowing. There were extensive purchases of obligations of foreign governments; but these were not remotely in excess of the new domestic capital issues that more normal conditions might have been expected to induce. If any closer connection between funding and inflation be sought, it appears that the period of war loans, dating from the first liberty loan, was a period of continuing rising prices, the Department of Labor index number of wholesale prices advancing from 139 in April, to 149 in May, to 150 in June; but that the percentage of increase was not sensationally more rapid than in the preceding period.

Returning then from unsuccessful induction to cautious analysis, it appears that inflation may conceivably but need not inevitably result from funding operations. The actual process has been subject to searching examination by Professor William A. Scott, and the conclusions therein reached are likely to represent the present consensus of deliberate economic opinion: To the extent that bonds are bought, ultimately, from uninvested capital, from current income, from liquidated investments, or from future savings there can be no

inflation. To the extent that bonds are bought by banks for their own account by credit creation, or by individuals through bank loans or are thereafter hypothecated for such loans, and partake of the nature of long time engagements rather than of installment purchases—inflation may result. The actual proportion of such non-inflating "savings" purchases to the class of potentially inflating "credit" purchases is, in the war-funding experience of the United States, undetermined. But whatever it be, there is no fixity attached thereto and financial policy exercised through banking control can reduce to the degree of virtual elimination the relative and even the absolute importance of credit purchases.

In the far less guarded form in which it has circulated in the United States, the inflation argument represents not the use of wrong theory, but the abuse of a right one. It is reminiscent of *Elia's* injunction to eschew roast pig lest conflagrations be encouraged, or a later counsel to travel on foot because badly driven horses will sometimes shy. That an unwisely directed borrowing policy may take the form of "credit" loans rather than of "savings" loans is no reason why borrowing as a measure of war finance should be denounced lock, stock and barrel as inflationist in effect. The obvious alternative is, having first determined to what extent recourse shall or must be had to loans in a war programme, to plan such operations to tap the fund of present and the source of future savings.

### III

The inflationist controversy, aside from the rather sorry rôle which expert economic opinion has played therein, points two lessons: (1) The danger of belaboring loans as an unsound method of war finance in view of the fiscal validity or, waiving any discussion, the practical necessity of recourse thereto. (2) The importance in a funding policy of distinguishing between "credit" loans and "savings" loans, of stimulating "savings" loans by appropriate devices, and of discouraging large resort to "credit" loans.

As to the first: The inflationist argument may conceivably have served some purpose in dispelling the illusion that the war could be financed without material increase in taxation. By specifying and emphasizing a danger that attends funding, the public mind may have become reconciled to new and drastic tax

burdens. But a disingenuous logic will inevitably rise to plague the state that uses it, in finance as in legislation.

Is it fanciful to assume that some considerable part of the difficulty we have experienced in arousing the great body of American citizens to the life and death necessity of continuous and universal loan subscription is due to the lethargy, even tacit hostility, in the public mind engendered by the denunciation of public borrowing as a vicious mode of financing the war? Such terms as "the conscription of capital," degenerating into outright epithets, such as "the slacker's theory of war finance," employed by Professor Carver, may have seemed of tactical advantage in aiding the enactment of heavy income and profits taxation. But we should impute a very short memory and a very faulty logic to the popular mind were we to assume that when, a few months later, the liberty loan campaigns were launched there was not a traceable consequence of public indifference or even indisposition.

As to the second: The importance of distinguishing between credit loans and savings loans, of discouraging the one and stimulating the other—there has been an impressive because unconscious development in the United States in even the short six months' interval between the first and the second liberty loans. We entered upon our war loan financing in much the manner of our infrequent peace loan operations, with the expectation of large corporate purchases and incidental regard to general popular absorption. We emerged from that trying experience—perhaps wiser, certainly chastened—with the realization that there was a limit marked by investment resources beyond which corporate purchases could be pushed only at the expense of credit expansion and that, on the other hand, there was a vast untouched fund in the form of the current and prospective savings of the great body of producers of the nation from which funded loans might be drawn.

The second liberty loan campaign has been waged with this distinction grown clearer and clearer. Before it had ended "save and pay" had become a slogan almost in replacement of the older "borrow and buy," and the nation may be said to have fairly awakened to the realization that the ultimate source of a national loan is the unspent income of its producers. It is an exhibit of the financial genius of the country, and a tribute to the sanity of its financial leadership that the banking organizations of the country re-

sponded, not, it is true, with equal effectiveness but on the whole with remarkable adaptability, to this new policy.

Much too remains to be done, but the vista is far from depressing. A nation so small extent accustomed to save, and so negligent of its savings, accustomed to place these savings in funded form, to whom a government bond has been as comprehensible but as unaccustomed as the acquisition of, let us say, an aeroplane or an adding machine, has taken its first step, and a large and true one at that, in the direction in which we must learn to walk if the war is to be financed with greatest efficiency and least hardship.

In the discipline that lies ahead there must be universal participation. It will not be enough to preach to the great body of wage-earners restraint in individual expenditure and diversion of income—whether accruing from increased productivity or heightened abstinence—to the public treasury through the instrumentality of periodic funding, continuous borrowing or war savings certificates. A like denial must show itself in every quarter. Public bodies, states, counties, cities and preëminently the federal government, must postpone or suspend actual projects of public improvement, commendable in ordinary times but now perilous in their additional requisition upon the capital supply and the labor force of the nation. Industrial and mercantile establishments, where not under the whip and spur of war production, must exercise caution in applying the gains of enterprise to enlargement of plant and join the queue of lenders. Almost all the financial institutions of the land, both by individual initiative and through centralized leadership, must embody in outright banking practice the doctrine of economic restraint.

For this is the alternative we confront: Not the fantastic possibility of financing the war without resort to loans; but the choice of a manner of borrowing on the one hand, which will supply the nation's needs from the savings of its citizenry, with a heritage of new thrift and restrained expenditure, and, on the other hand, a mode of forced loan effected through the unchecked expansion of banking credit with its mischief-making trail of inflation and depression. Only an unintelligent fatalism will leave the issue uncertain.

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NOTE.—Since the foregoing was written, there have been im-

portant developments in our financial policy. The Treasury has made large use of certificates of indebtedness in anticipation of revenue from loans and taxes, and the issue of war savings certificates for popular absorption has been vigorously begun. The bearing of these devices, notably of the certificates of indebtedness upon the matter of inflation is an extremely difficult problem certain aspects of which the present writer has undertaken in another connection to discuss. It is also interesting to note that the Comptroller of the Currency has wisely arranged that the forthcoming report of the conditions of the national banks, as of November 20, 1917, should make available certain much needed data as to subscriptions by and through banks to the second liberty loan, and as to the amount and quality of loans made by the banks on the security of liberty loan bonds.—J. H. H.

## WAR FINANCE AND INFLATION

By A. C. MILLER,

Member, Federal Reserve Board.

The beginning of wisdom in the financing of our war is the full appreciation of the fact that the ultimate term in our war finance must be not money, not the dollar—but what the dollar will buy. Every day that the war goes on makes it clearer and clearer that the war is a contest in economic organization and resources, and that victory will lie with the nations which show themselves best able to organize their resources and to resist the processes of economic waste and disintegration. Indeed, it looks as though the war would not end until all the economic power of America is developed to its highest pitch of efficiency and then delivered as gun-power on the far flung battle fronts of Europe. We are all rapidly coming to understand that great belligerent nations must be organized from the fighting line back to the field, factory and foundry, as great fighting machines, as great organizations for converting the productive-power, the saving-power and the will-power of the people at home into fighting-power at the front. We are also coming to understand that the winning of the war presents a problem of economic strategy as well as of military strategy: the two together constituting the essential elements of an adequate war strategy. Our economic strategy must work hand in hand with our military strategy if we are to make ourselves most effective in coördinating our own activities, and those of the other nations forming the grand alliance, into one great whole so as to bring the war to an early and victorious conclusion. Many are the contributions which time and circumstance will show America must make toward the successful completion of the war, but there is none perhaps that in the end will prove more important than that of developing and supplying leadership and mastery in coördinating the activities of herself and her associates along the larger lines of economic and military strategy.

The financial problem in its larger aspects, as I conceive it, is largely one of developing a plan under which the instrumentalities of finance may be so employed as to enforce a sound, and in the end, a triumphant economic strategy.

## I

Some such thought as this, I believe, was in the mind of the President when he made the momentous observations on war economy and finance contained in his message of April 2. Properly understood, they are more than observations: they are the basic principles of national finance for our guidance in this great crisis. The President, calling upon Congress and the country to "exert all its power and employ all its resources to bring the government of the German Empire to terms and end the war," states what this will involve in the way of economic and financial preparation in these propositions:

It will involve the organization and mobilization of all the material resources of the country to supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible.

It will involve, also, of course, the granting of adequate credits to the government, sustained, I hope, so far as they can equitably be sustained by the present generation, by well-conceived taxation.

I say sustained so far as may be equitable by taxation, because it seems to me that it would be most unwise to base the credits, which will now be necessary, entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people, so far as we may, against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

Supplementing these statements in his Proclamation on War Economics, which was issued less than two weeks after the war message was delivered to Congress, the President concludes one of the most trenchant economic surveys that has ever come from the pen of statesman or scholar with these pregnant words:

This is the time for America to correct her unpardonable fault of wastefulness and extravagance. Let every man and every woman assume the duty of careful, provident use and expenditure as a public duty, as a dictate of patriotism which no one can now expect ever to be excused or forgiven for ignoring.

Briefly summarizing the economic and financial principles laid down by the President, I would state them as follows:

- (1) Organization and mobilization of all the country's material resources;
- (2) Strict economy through saving;
- (3) Well-conceived taxation;
- (4) Avoidance of inflation.



The rule of finance they suggest to my mind for the conduct of the war, I venture to formulate as follows: *Taxation should be carried to the point where the remainder of the needed income of the government can safely be provided out of the proceeds of loans—that is, be provided without producing inflation of credit and prices.* The clear inference I draw is that sound finance will require that the limits of taxation should be extended as borrowing reaches the point of inflation. Hardly less clear to my mind and certainly not less cogent is the inference that finance alone will not achieve the needed results: consumption will have to be controlled and production will have to be directed on some adequate basis, in order that any plan of finance we may adopt shall be certainly equal to the task of providing the government with the vast masses of goods and services it will require for the war.

## II

The present war differs from preceding wars in many ways but in none more than in the prodigious quantities of material supplies of many sorts which are required. It is this circumstance which gives to its financial problems their peculiar difficulty and urgency. No satisfactory progress can be made toward a solution of those problems if close calculation is not made at every point of what is involved in the way of surrender for war purposes of the customary consumption and income of the country. I venture, therefore, some statements—not on my own authority, but on the authority of men who have given much thought to the matter—touching some of the underlying facts bearing upon the economic costs of the war in terms of the man-power it will require.

We are setting out to provide, equip and maintain an army of a million men. Competent judgment has estimated that it will take the labor of four men, working in munition factories, clothing factories, on the farm and the transportation systems of the country, to maintain one soldier at the front according to modern standards of military efficiency. This means that an American army of one million men will require the output of four million men working in factory, field and foundry. If the war should go on into a second year and we undertake to organize and maintain at the front an army of two million men, the ratio will still hold good: we shall require an industrial army of eight million men working at home to

maintain, provision and equip those fighting at the front. But our part in the war, it is well known, is not only to maintain our own quota of the necessary fighting forces, but also to help the great nations with which we are associated to maintain their quotas and, in addition, supply their civilian populations with a large part of their necessary maintenance. Europe is now on rations and an important part of our work in furthering the war is to supply the nations, with which we are allied, with the primary necessities to the utmost extent we can. There is competent authority for the statement that the munitions, provisions and other maintenance which the armies and civilian populations of our allies should have from us will require the output of more than ten million laborers working in their behalf in this country.

If these estimates are approximately accurate and we can make our predications on the assumption that we are to maintain an army of but one million men, requiring as has been pointed out the labor force of four million men at home, and bearing in mind that the million men composing the army are themselves withdrawn for the most part from productive industry, it is clear that the undertaking involves the devotion to war purposes, directly or indirectly, of the services and product of approximately fifteen million men here in America on the farm, in the shipyard or in the factory. If we accept as approximately accurate the estimate of our present available labor supply as amounting to thirty million workers, the magnitude of the economic problem with which we are confronted, is suggested by the statement that not less than one-half of our existing labor supply, during the period of the war, must be devoted to the producing of materials and supplies to be consumed by our own army and the armies of our allies and the civilian populations of the nations in Europe which are dependent on us for a part of their necessary keep. This means that the civilian population of our own country will have to rearrange its mode of living so as to be able to get along with the product of the remaining labor power of the country—that is, about one-half of what has been customary—unless happily the labor forces of the country can be effectively recruited and augmented by the introduction of men and women into industry who are not now to be reckoned among the productive classes of the community. We can do this if we will, and it is doubtful whether we can win the war, or at any rate

win it as quickly and decisively as we all desire, unless we raise our will-power to the point where we will do it.

This, in sum and in its simplest terms, is the economic problem to which we must address ourselves. The financial problem is the problem of getting control of the products needed by the government by the methods which are least wasteful, least obstructive and least subversive.

### III

On its financial side, the magnitude of the obligation we have assumed is indicated by the nineteen billions of dollars which Congress has authorized to be used for the general purposes of the war for the fiscal year ending June 1918, including in this total the credits granted to the Allies. Never has any nation, either in the present or any other war, undertaken so vast a pecuniary obligation for the same period of time. We are undertaking to apply to the support of the war in a single year almost as much as the German Empire has spent since the beginning of the war.

Can we provide for the vast expenditure we have undertaken? What have we, as a nation, got in the way of the requisite financial resources to offset the nineteen billions Congress has voted?

It must be clear to any one who gives any serious attention to the financing of the war that the expenditures of the government must, except for a negligible proportion, be defrayed out of the income of the community. The limits, moreover, within which any part of the burden of our war costs can be shifted to posterity are narrow, especially for a country in our position with no outside markets left from which to borrow, that we must regard the burden as one that has got to be shouldered and paid for as we go along out of the product of our current national industry—or, putting it in the more familiar financial term, out of the people's current income.

Unfortunately no official or authoritative estimate of the current annual income of the people of the nation has been made, so far as I am aware. Some widely used estimates made at the time of our entry into the war placed the annual money income of the nation at forty billions of dollars or thereabouts. Such information and data as I have been able to obtain and such investigation as I have been able to make, lead me, however, to believe that this is a very considerable under-statement of our actual situation. Using

the term "income" as substantially identical with the money value of the gross annual product of the country's industrial and business activities. I believe there is warrant for the opinion that the industrial and business income of the people of the United States for the year 1917 may come close to fifty billions of dollars: the following estimate in summary form containing the data on which this opinion is based:

SUMMARY ESTIMATE OF THE TOTAL VALUE OF THE NATIONAL PRODUCT AND PRODUCTIVE SERVICES FOR THE YEARS 1909-1910, 1914 AND 1916-1917 IN BILLIONS OF DOLLARS<sup>1</sup>

	1909-1910	1914	1916-1917
Agriculture.....	5.5	6.1	14.3
Manufactures.....	8.5	9.9	14.8
Mineral.....	2.0	2.1	3.5
Fishing.....	0.05	0.1	0.1
Transportation.....	2.8	3.0	3.5
Commercial and professional.....	9.0	10.0	13.5
Total.....	27.85	31.2	49.7

The figure of fifty billions for the income of the nation in 1917 refers, of course, to gross income. What proportion of these fifty billions may properly be regarded as surplus or clear income—that is to say, income over and above what the people of the country must consume in order to keep themselves in a state of health and

<sup>1</sup> In estimating gross values of national industry by principal branches, production figures of the Census Bureau, the Department of Agriculture, the Geological Survey and other federal agencies were used. Figures for 1916-1917 are more conjectural than those for 1909-1910 and 1914 for the reason that the value of manufactures, or the total "Value added by manufactures" had to be estimated largely from incomplete output data of certain basic industries and wholesale prices prevailing during the year. In this connection use was also made of the index number of wholesale prices published by our Bureau of Labor Statistics. Figures of income of the commercial and professional classes, including persons in the public service, are rough approximations, based, in part, upon census data of occupations.

The large increases in the 1917 values of agricultural products are due largely to the higher price level and, to a much smaller extent, to larger yields. In mining and even more so in manufactures, the higher values are due both to higher prices and to larger output, as may be seen from the following

strength and that cheer which has got to be maintained even in war-time if we are to deliver our most telling blows, and to provide for the necessary upkeep of the industrial equipment of the country—is a matter upon which opinions and estimates will differ widely. Approximations, however rough, must nevertheless be attempted.

The annual savings or investment fund of the American people at the beginning of the European war was variously estimated at from three to five billions of dollars. That meant that out of the gross income of the country at that time, three to five billion dollars' worth of goods were not consumed by the recipients or owners of the income, but were invested in extensions of industry and business, or in other words, converted into additions to the financial and industrial capital of the country.

How much this actual savings fund of from three to five billions of dollars may, as a matter of fact, have been increased during the past three years, or even how much the potential savings fund of the country may have been increased by reason mainly of the vast

tables showing yearly crop and output figures for certain leading agricultural and mineral products:

QUANTITIES OF PRINCIPAL AGRICULTURAL PRODUCTS FOR THE YEARS NAMED  
BELOW

	1909	1914	1917
Wheat, 000' bushels.....	683,379	891,017	659,797
Corn, 000' bushels.....	2,552,190	2,672,804	3,210,795
Oats, 000' bushels.....	1,007,143	1,141,060	1,580,714
Cotton, bales.....	10,649,000	16,135,000	12,047,000
Tobacco, 000' pounds.....	1,055,765	1,034,679	1,185,478
Hay, 000' tons.....	97,454	70,071	91,715

QUANTITIES OF PRINCIPAL MINERAL PRODUCTS FOR THE YEARS NAMED  
BELOW

	1910	1914	1916
Coal, Bituminous, 000' short tons. ....	417,111	422,704	502,520
Iron, pig, 000' long tons.....	26,674	22,263	39,126
Copper, 000' pounds.....	1,080,160	1,150,137	1,927,851
Petroleum, 000' bbls. of 42 gal. ....	209,557	265,763	300,767
Steel, short tons.....	252,479	343,418	563,451
Cement, 000' bbls. of 380 lbs.....	77,785	87,258	95,394

accessions to the pecuniary prosperity of the country, which have occurred in this same period of time, offers an engaging problem both for statistical enterprise and for economic inference and conjecture. My inference is that the largest part of this increase in the money income of the country may rightly be rated as an addition to the potential savings fund. The indications above given are that the money income of the country may have grown by an amount as much as eighteen billions of dollars in the past three years, due partly to increased production, partly to intensified demands for many of our staple products, but mainly to the rapid and general advance of prices. If we allow a deduction of one-third or six billions from the estimated increase of eighteen billions in order to offset increased living, or other costs (and, also, to account for variations in values computed because of steadily changing price levels during the year), we have left the sum of twelve billions of dollars as the apparent amount by which the potential savings fund of the country has been enlarged during the past three years. These twelve billions added to the actual savings fund of the country, which was estimated at from three to five billions of dollars at the beginning of the European war, would seem to indicate that the present total savings or investment power of the country, taking the *actual* and *potential* funds together, might amount to as much as fifteen billions of dollars or more for the year 1917.

The war taxes, which were imposed by Congress at its recent session, contemplate the raising of some two and a half billions of tax revenue, though there appears to be some reason for believing that the yield of the new taxes may considerably outrun the estimates. Obviously the government cannot also borrow that which it takes by taxation. Current income is the source out of which both our tax revenue and our loan revenue will be derived. If some three billions of tax revenue are taken out of the annual surplus income of the country, which I have stated my reason for believing might amount to as much as fifteen billions of dollars, then it would appear that twelve billions of dollars represents about all that could safely be raised by loans.

The authorized expenditures and advances for the fiscal year 1918, however, run close to twenty billions of dollars and leave us, therefore, with the problem of how the additional four or five bil-

ions in excess of the estimated actual and potential savings fund of the nation are to be obtained. Looking at the problem purely as a matter of dollars and cents, it must be admitted that the financing of the war on the projected scale of expenditure is far from a simple problem, even with such reassuring indications of our possible income and savings fund as I have ventured to give for the year 1917. It raises at once two extremely important questions:

- (1) Can the vast sums, which it is proposed to raise from loans, be raised without causing a serious inflation of credit and prices?
- (2) Is it at all possible that the war can be carried as an "extra"—that is to say, that business and living can be as usual during the period of the war?

#### IV

No one who looks beneath the surface appearances to the hard and inexorable realities, can for a moment maintain the position that the war can be carried as an "extra." We cannot carry the war as an "extra" and business cannot be as usual during the period of the war, if we mean to win.

I cannot believe that those who are sponsoring the doctrine of "business as usual" can appreciate the economic significance of the doctrine. This war, as the President with rare prevision told Congress and the people, will involve the "organization and mobilization of all the material resources of the country to supply the materials of war." The man who knowingly preaches the doctrine of "business as usual" at this time is, therefore, proposing that *private advantage* should be set against or ahead of *public necessity*. In this crisis in the nation's life, every business, no matter what its nature, is affected with a public interest and the public has the right, and owes it to itself, to determine within what limits that business shall be circumscribed in the interest of the war, or to what extent shall be helped and fostered in the same interest. The American business system is on trial in this war. No one doubts its technical efficiency and it should not allow anyone in its ranks to raise a doubt regarding its competency to exercise vision and imagination in seeing clearly what must be done by the nation in the way of changes in our business and economic organization during the war. If it fails to rise to the occasion through weakness or selfishness, or if selfishness is allowed to hamper and hinder the development of a



rational program of economic finance, the American business system will have gone a long way toward sounding its death-knell and surrendering to other agencies the right of leadership in the great processes of economic reconstruction which must take place at the close of the war.

The truth is that nothing can be as usual while the war is on—neither business nor living can be as usual. We are in this war to win it and our children will never forgive us if we fail to do any of the things necessary to win it. The sooner we take this truth to heart and reshape our lives accordingly, each one in accordance with his circumstances, the sooner the war will be won and over. The only powers on earth that can defeat us are weakness and selfishness—selfishness in the shape of profiteering, if business is as usual, and weakness in the shape of waste and indulgence, if living is as usual. We need not doubt our ability to overthrow the enemy without, if we can control the enemies within: that is, the temptations to make money as usual and to live and enjoy as usual. Indeed, the doctrine of “business as usual” is not only vicious in its necessary economic implications for a nation in the throes of a great crisis, but is equally mischievous in its financial implications. For the twin-sister of the doctrine that business can be as usual is that other mischievous doctrine that the war cannot be financed without inflation.

## V

Inflation in connection with government war financing may arise from many different causes but there are two which are of particular interest in our present situation: (1) Inflation of prices is apt to result when the government undertakes to spend money, however obtained, faster than the goods it seeks to buy are being produced. (2) Inflation, both of banking credit and of commodity prices, results when the government undertakes to borrow faster than the people are able or willing to save. In the last named case, which is the one I mean to discuss, the loans of the government, by one device or another, will be forced upon the banks. The banks will pay for the loans by an extension of banking credit and currency. The inevitable effect on commodity prices of an expansion of banking credit and currency is to raise them. It would seem to need no extended argument in this day in America to demonstrate

that banking credit in any of its typical forms is purchasing power, exerting the same effect on prices when used in payment for goods or purchases, as any other forms of purchasing media. When purchasing media are produced faster than goods are produced—in brief, when the supply of currency and credit in its increase outruns the increase of the supply of purchasable goods—the prices of goods must rise. Whether such a condition is best described by the word “inflation,” the fact remains that the rise of prices of purchasable goods in such a situation is closely connected with the increased supply of purchasing media. Moreover, when the increase of purchasing media, occasioned by the expansion of banking credit, follows upon the investment of banking credit in government loans, the conclusion is irresistible that the expansion of credit and its resulting consequences in increased commodity prices are being induced by bank lendings to the government.

The process by which government loans produce inflation is disclosed in the financial history of all the great European belligerents. All of these governments, notably Germany, have made extensive use of banking credit in the flotation of their loans. Not only the great central banks, but the banks generally in the several European countries, have been put under pressure to invest their credit extensively in the purchase or carrying of government securities. The London *Economist* has repeatedly characterized the situation thus produced as “bad finance forced on the banks by the government.” An examination of the changes of condition of the banks of Great Britain, exclusive of the Bank of England, shows what the process has been. Their deposit liabilities, that is to say their checking accounts, have increased between the end of 1913 and the end of 1916 about four hundred and eight million pounds sterling, an increase of close to 40 per cent. Their bills discounted on the other side of the statement show only a negligible increase, an increase of some seven million pounds sterling. Their investments, on the other hand, show an increase from two hundred and eleven million pounds sterling to four hundred and thirty-seven million pounds sterling, an increase of over two hundred and twenty-five million pounds sterling, or 107 per cent: in view of all the circumstances and known facts, it may be said that this increase is made up chiefly, if not almost entirely, of government obligations, such as treasury bills, exchequer bonds, etc. In brief, the expansion of

banking credit in England seems clearly disclosed by these figures to have been occasioned for the most part by the expansion of bank investment, directly or indirectly, in government obligations.

A similar process has been at work in the other countries of Europe. The expansion of banking credit in France and Germany, however, has been more largely in the form of bank notes than of bank deposits. The bank note circulation of France increased from twelve hundred and eighty-nine million dollars in August, 1914, to forty-one hundred and seventy millions in October, 1917, an increase for the period of over 223 per cent. The circulation of the Reichsbank of Germany has risen from six hundred ninety-three million dollars in August, 1914, to twenty-two hundred and eighty-five millions in October, 1917, an increase of 230 per cent in the course of a little more than three years. This increase in the note circulation of the great central banks of France and Germany has been occasioned largely by investments of their credit in the obligations of their respective governments, and seems definitely to indicate that government borrowing has been a leading factor in the expansion of their note circulation. Doubtless other causes have contributed to the vast expansion of banking liabilities in Europe, but no one cause has probably been a greater factor than the investment by the banks of their credit in taking or carrying government loans.

Whether a similar result is to be expected here in connection with our greater government borrowings, and if so how soon, will largely depend upon whether all the people who have income enough to save will save, or whether they can be or will be made to save enough out of their incomes to absorb such loans of the government as may be put out in excess of the ordinary or usual savings fund of the nation—that is, absorb them as savings loans, not as credit loans.

The obligations of a government, such as the United States, when considered purely from the investment point of view, are unquestionably to be regarded as the most eligible sort of investment. Commercial banks, however, in a country like ours, which makes daily use of a large body of mobile banking credits, are not to be likened to investment institutions in the ordinary sense of the word. A bank's capital is but a small part of its investment power. A bank is a bank only as it invests its credit. But the safe i-

vestment of its credit, as the history of banking experience has repeatedly demonstrated, necessarily restricts a bank in its choice of securities to those which possess the necessary liquid character. The objection to considerable investment by banks of their credit in investment securities, such as government bonds, arises, not out of any question as to the solidity of such securities, when well selected, but rather because of their lack of liquidity. The history of modern banking has shown conclusively that distinction must be made between "security" and "liquidity," or "value" and "availability" in determining the kind of investments which are best fitted for banks which deal in their credit. There are many forms of investment paper which from the point of view of security leave nothing to be desired, but yet which are unsuitable as the basis for the creation of a great body of currency or of active banking credit.

The doctrine set forth in the famous English Bullion Report, which came in the midst of the controversies growing out of the management of the Bank of England's circulation during the Napoleonic Wars, whose truth has since been attested by the experience of every modern nation, is that two things are necessary to protect a system of banking currency and credit against the danger of undue expansion. One of these is the *maintenance of adequate reserves*; the other is the *maintenance of adequate liquidity of investments*. By liquid investments is meant bank paper which liquidates itself in short periods of time out of the proceeds of the transactions which have given rise to the paper. That is to say, paper which grows out of transactions in trade and industry connected with the production or distribution of goods, which—as the goods are produced and sold in the normal movements of trade and industry—will supply the funds out of which the borrowings of bank credit can and will be repaid. Self-liquidating paper being, therefore, paper which is connected with productive operations in industry, that is to say, operations which result in an increase in the supply of usable and salable goods, it follows that the same banking transaction, which gives rise to an increase in the supply of purchasing media through the expansion of banking credit, also gives rise to an increase in the supply of purchasable goods through the assistance rendered the producer.

But when a bank invests its credit in the purchase of govern-

ment bonds which are issued for the purposes of war—in brief, for operations that result, not in the production, but in the consumption and destruction of goods—we have an altogether different situation. The situation is one in which there has taken place an addition to the volume of outstanding banking credit and purchasing media with little additional in the way of goods to offset it on the shelves of the shop-keeper, or the warehouse of the manufacturer. In brief, credit transactions of this sort, so far from being immediately connected with operations resulting in the increased production of *aggregate* goods, are rather to be described as connected with operations resulting in the diminution of the community's supply of purchasable goods. In war times, governments borrow, not for the purpose of producing goods, but for the purpose of getting possession of goods already produced, or being produced, goods whose production is otherwise financed. The credit created and extended by the banks to the government in the process of taking up government bonds is to be regarded as an addition to the total volume of banking credit, not called out by the needs of productive industry, but occasioned by the necessities of the public treasury—in brief, what is being financed by such a creation of credit is not the production of goods, but the acquisition of goods by a non-productive borrower.

It may be asked, in fact has been asked, how the credit created and extended by a bank in order to enable its customers or itself to take up and pay for subscriptions to government loans, can inflate commodity prices, since, it is said, credit acts on commodity prices only when offered in exchange for, or payment of, "commodities."

The process of price inflation in the case in question, that is where the issuance of government loans is the admitted cause of bank-credit expansion, is perhaps slightly obscured by this fact, but in its essentials does not differ from the familiar and typical case of credit expansion, if sight is not lost of the fact that the credit extended by the bank in payment for bonds is merely the beginning and not the end, or the whole, of the process. The credit received by the government in payment of its bonds is not held idle in the Treasury, but is used to pay for supplies bought or contracts in process of execution and soon filters into the stream of circulating bank credit, becoming part of the aggregate supply of purchasing media afloat in the community. For when the govern-

ment takes payment in credit, it follows that it will make payment by credit, transferring the credit that it has on the books of the banks in the same way as a merchant or manufacturer would, who had been granted a credit accommodation by his bank. Moreover the credit created in first instance by the bank's subscribing to government loans and set in motion by being used by the government in payment of purchases made, keeps on moving and changing hands, passing from the hands of the government to the munitions manufacturers, from them to the steel manufacturers, and so on—in other words, lives on as a part of the general body of mobile and active banking credit until it is extinguished by some one, who, having payment to make to a bank, uses it for that purpose or until some one who wishes to buy a bond from a bank, makes payment therefor in banking credit. When that time is reached, there will be a simultaneous reduction on both the *liabilities'* and the *resources'* sides of the bank's statement. Till that time is reached, both the *liabilities'* and the *resources'* sides of the accounts will be swollen by reason of the initial transaction in government finance, which occasioned the extension of bank credit for the purpose of making the investment in government bonds.

There is much misconception with regard to the meaning of "bank resources" and the significance of increases of banking resources. From the point of view of the lending bank, the obligation of a solvent debtor is a "resource"; from the economic point of view, however, only that is a resource which in its existing state, either is or is in process of becoming a usable good. When, therefore, banks are investing their credit extensively in government securities, there may be a very great increase in the banking resources of the country, without any increase in the country's actual economic resources. But since prices—that is to say commodity prices—depend upon the ratio existing between the supply of purchasing power in terms of money, and the supply of purchasable resources in the shape of consumable goods, it follows that an increase of bank resources not offset somewhere in the economic process by an increase of economic resources in the shape of consumable goods, must and will lead to a rise of prices.

It can hardly be doubted in view of the known facts of the case that the great increase of prices which has been experienced throughout the belligerent countries of Europe is, in large measure, due to

the multiplication of the means of purchase and payment by their banking systems, more rapidly than the multiplication of the goods available for purchase by their industrial systems. Nor can it be doubted that a considerable part of the rise of prices, which we have experienced in our own country since the beginning of the European war in 1914, has been induced by the great body of new banking credit created, which has outrun in its expansion the growth in the productive output of the country. The rise, moreover, has continued since our entry into the war. The index figures compiled by the Bureau of Labor Statistics show that while wholesale prices in April 1917 were 74 per cent higher than in July 1914, they were 89 per cent higher in July 1917. It seems likely that if later figures were available, they would show the forward march of prices to be continuous. The rise of prices experienced in this country, though much less than that which has taken place in the leading countries of Europe (the price index compiled by the London *Economist* showing an increase between July 1914 and September 1917 of 120 per cent) is yet sufficient to awaken serious concern, for causes not dissimilar in their general character and incidence have been operating to produce the rise of prices in both England and the United States, most notable among them, as already indicated, being the expansion of banking credit.

How rapid the expansion of banking operations in the United States has been during the past three years is definitely indicated in the striking figures for the items "total deposits" and "loans and investments" which have been assembled in the sub-joined tables, based upon the data compiled in the office of the Comptroller of the Currency.

TOTAL DEPOSITS OF ALL BANKS IN THE UNITED STATES EXCLUDING SAVINGS  
BANKS AND PRIVATE BANKS  
(Bank, individual and government)  
(In millions of dollars)

	June 30, 1914	June 23, 1915	June 30, 1916	June 30, <sup>a</sup> 1917
National banks .....	8,543	8,819	10,856	12,767
State banks .....	3,407	3,460	4,518	5,672
Trust companies .....	4,283	4,603	5,728	6,413
Total .....	16,233	16,882	21,102	24,852

<sup>a</sup> Report of national banks as of June 20, 1917.



LOANS AND INVESTMENTS OF ALL BANKS IN THE UNITED STATES EXCLUDING  
SAVINGS BANKS AND PRIVATE BANKS

(In millions of dollars)

	June 30, 1914	June 23, 1915	June 30, 1916	June 30, <sup>a</sup> 1917
National banks.....	8,345	8,728	10,127	11,936
State banks.....	3,268	3,304	4,073	5,003
Trust companies.....	4,163	4,395	5,307	6,102
Total.....	15,776	16,427	19,507	23,041

It appears from these figures that both deposits and loans and investments have grown in the United States at a very rapid rate since the beginning of the European War in 1914. The growth of bank deposits between the end of June, 1914 and the end of June, 1917 was eight billions six hundred millions of dollars, a gain of 53.1 per cent. The increase of loans and investments between the same dates was seven billions two hundred sixty-five millions of dollars, a gain of 46.1 per cent. Adequate data are not available for estimating with accuracy the trend of development since the end of June last. The abstract of the Comptroller of the Currency for September 11, 1917, however, shows a gain of four hundred sixty-one millions of dollars in deposits of the national banks between the dates of June 20 and September 11, and of three hundred forty-five millions of dollars in the loan and investment account for the same period. Much more striking is the trend latterly disclosed by the reports of the clearing house banks of New York City, covering the period which has elapsed since the date of the last call of the Comptroller: between the dates of September 8 and November 3, 1917, the loans, discounts and investments of the clearing house banks increased from \$3,850,652,000 to \$4,510,385,000, a gain for a period of eight weeks of \$659,733,000 or 17.1 per cent. Demand deposits for the same period increased from \$3,675,490,000 to \$4,136,335,000, a gain of \$460,865,000 or 12.5 per cent. The trend of development in such a highly sensitive center as New York—the most important banking center of the country—is not of itself, of course, to be taken as measuring the banking trend in the country at large but it may be taken as indicating the general direction in which banking operations are moving. Taken with other—minor

<sup>a</sup> Report of national banks as of June 20, 1917.

and less significant—indications which need not here be detailed, it seems not improbable that, if adequate data were available, they would show an increase of some 10 per cent, or from two to three billions of dollars, in both the deposit account and the loan and investment account of the banks of the country since our entry into the war.

It can hardly be doubted, I think, in view of the facts and probabilities thus outlined that the expansion of banking credit, which has been in progress in the United States since shortly after the opening of the year 1915, has already produced a condition of serious price inflation. The evidence seems unmistakable that inflation of credit and prices is already at work and that, in the matter of inflation, we are confronted, not by a theory, but by a condition—a condition which there is reason for believing will be aggravated if undue reliance is put by the country on banking credit as a competent economic method for financing the loan requirements of the government.

If we examine the movements of the federal reserve banks in recent months, we get some light upon one of the factors which have helped to sustain the most recent phase of the expansion of banking credit which is under review. Between the dates of April 6 and November 2, federal reserve banks increased their holdings of bills discounted and purchased from \$100,663,000 to \$689,977,000, an increase of \$589,314,000 or 585.4 per cent. Federal reserve notes in circulation increased for the same dates from \$376,510,000 to \$881,001,000, an increase of \$504,491,000 or 133.9 per cent.

When it is recalled that the reserve banks are bankers' banks and that investments made by reserve banks of their credit in discounted or purchased bills, appear on the books of the borrowing or selling banks either as cash balances or as additions to (or replenishments of) their cash holdings,<sup>4</sup> it is evident that an increase of five hundred eighty-nine millions of dollars in reserve bank investments was quite sufficient, so far at least as amount is concerned, to sustain an increase of from two to three billions of dollars in the operations (loans and deposits) of the banks of the country. Whether any such direct and definite connection between the operations of the banks of the country and the operations of the federal

<sup>4</sup> In other words, as the customary and necessary provision of cash or cash credit, which, in the accepted nomenclature of banking science, is called "reserve."

reserve banks can, as a matter of fact, as yet be said to exist, is of course very doubtful. But the connection between the operations of the federal reserve banks and the growth of their member banks' operations will probably have to be regarded as close enough to justify the view that the recent rise in the volume of reserve bank operations has been a factor of consequence in sustaining the most recent phase of the expansion of banking credit which has been noted.

If this rise continues, it is not unreasonable to expect that in time such use of the rediscount facilities of the reserve system might convert it into a great engine of banking inflation. The situation is therefore one which suggests the advisability of careful attention being given to the character and growth of the operations of the federal reserve banks in these critical times, lest they be made to bear an undue share of the burden incident to the borrowing operations of the government.

The credit potentialities of the federal reserve system are vast. The twelve banks composing the federal reserve system have an aggregate capacity of credit expansion of about two billions of dollars. If we assume that one dollar of reserve bank credit increases by not more than sevenfold when transmuted into the credit extended by a member bank to its customers, it is clear as a proposition of banking arithmetic that the federal reserve banks and member banks of the federal reserve system, taken together, have an additional credit capacity of some fourteen billions of dollars.

The question which I believe, in view of this situation, the country must soon face, is whether it will be the part of financial prudence for us to attempt to finance our government loans by an expansion of banking credit with accompanying inflation of prices, or whether it will be better, however drastic the steps necessary to accomplish this result may be, to pursue the course of converting the potential savings fund of the nation into an actual savings fund of sufficient magnitude to absorb the loans of the government as *savings loans*.

## VI

It does not fall within my province in this article to discuss the different steps which are likely in the end to recommend themselves to the mature judgment of the nation, if the people are to be pro-

tested, again to quote the President's language, "against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans."

One or two general observations may, however, not be out of order. It will be the part of prudence for us, I believe, to look into the future as clearly as we can and try to estimate how far we shall have to reshape or supplement our traditional financial and economic methods in order to adapt them to the unusual character and unprecedented dimensions of the financial and economic situation, which the war is presenting: *Whatever will have to be done in the end would better be done as soon as public opinion can be brought to accept it.*

The traditional methods of finance are everywhere showing themselves inadequate, unless accompanied and reinforced by thorough-going changes in the general organization of industry from a peace basis to a war basis. The weakness and defect of much of the current discussion of war finance is, as I view it, that it does not seem to comprehend the way in which the whole problem of financing the present war has been utterly transformed by the stupendous magnitude of its financial requirements. Current discussions run too frequently in terms of the traditional finance. There is too much discussion as to whether loans or taxation should be our main reliance in financing the war, and too little discussion of the changes which have got to be made in our whole economic organization in order that any financial system we may devise will prove effective in putting the government quickly and continuously in possession of the vast streams of supplies of all sorts required for the war. The financial problem, at best, is only partly a *financial* or money problem—a problem of getting the wherewithal to buy and pay. Chiefly it is a problem of getting the goods and services to buy.

Obvious and important, therefore, as a system of well-distributed taxation is, as an alternative to inflation as an expedient of war finance, it can never be more than a partial solution of our difficult financial problem. When the system of war taxation, the foundations of which were laid by Congress at its last session, is carried to its furthest practicable limits, there will still remain a very, very wide margin of war expenditure—perhaps the largest part—which will have to be taken care of out of the proceeds of loans. Our major financial resource is bound to be the loan and one of our

major financial problems, therefore, to prevent the loan from deteriorating into an inflation. Specifically and positively the problem is as to how we may best proceed in putting and keeping the loan on a basis of financial safety—that is on a solid foundation of industry and thrift. The way to this result was pointed out by the President in words which have already been quoted and which can not too often be repeated:

(1) by "every man and every woman" assuming "the duty of careful, provident use and expenditure as a public duty" and;

(2) by "the organization and mobilization of all the material resources of the country"—

the organization, be it observed, not of a part, not of so much as can be conveniently spared, but the organization of *all* the material resources of the country "to supply the materials of war and serve the incidental needs of the nation in the most abundant and yet the most economical and efficient way possible." And all that this or any financial conference can do; all that any executive department of the government can do; all that Congress can do is to work out in suitable legislative and administrative detail the terms of the President's equations.

In sum, we must, as a nation, produce more and consume less. This, in its simplest terms, must be our national formula of finance. We must produce more of the things which the nation at war requires and, in order to set free the nation's productive forces to accomplish this result, we must consume less of the things which the nation in war-time does not require, even though it has been our national habit in peace-time to consume such things in unlimited measure.

Whether the various agencies of governmental administration which have thus far been set up for adjusting the economic life and activities of the nation to a war basis, will prove adequate to accomplish the result, may be doubted. Much has already been accomplished, but much remains to be accomplished and time is of the essence of success. It may well be expected, should the war run on into a second year, that a more authoritative status will have to be given to these special agencies if they are to be made fully competent to give effect to the war-will of our people on its economic side, and that they will not be able to achieve the necessary results

until they are clothed with the power to say what shall, and what may not, be done in the field of industry, or to define the limits within which this thing or that thing will be permitted.

I believe that the people of the country, when the issue is put before them intelligently and squarely, will not hesitate to accept whatever may be involved in a sound financial program with the same conviction and courage as they accepted the war. No nation ever went into a righteous war more deliberately than did the United States. The people, in assuming the obligation of war, I believe, also understood that they were assuming the responsibility of properly providing for its conduct and I am inclined to think that the great body of plain living and plain thinking people in this country are capable of comprehending what this means in the way of a sound financial program. Whether it may mean taxation carried to the farthest limits, compulsory saving, industrial conscription, priority of industry or priority of credits, the response will be made by the people if the call is authoritatively made upon them. It is my belief that beyond what is ordinarily appreciated, the country is ready for whatever may be involved in the thorough-going and effective prosecution of the war, for the country is realizing that this is a war of blood and iron, and that until we have effectively mobilized our iron, we shall not be in a position to bring the war to a conclusion which will "make the world safe for democracy."

## THE ARGUMENT AGAINST INFLATION FROM GOVERNMENT LOANS

BY ALEXANDER D. NOYES,

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After Professor Hollander's comprehensive statement of the economic theory bearing on this question, and Mr. Miller's thorough review of the general principles involved, I feel as if further comment would be superfluous. What I shall endeavor to do, however, in this article, is to direct attention particularly to the plain and practical aspects of the question in the light of experience.

The broad field over which Mr. Miller's article carries us diverts attention from the actual subject—which is not, Are we in danger of inflation? but, Do government loans cause inflation? It is not enough to say that there is inflation and that there are government loans, and that therefore the loans may have caused the inflation. Even accepting Mr. Miller's facts and figures regarding inflation of bank credit, we must still inquire where and how that inflation occurred, and what its precise relation is both to the government loans and to what we ordinarily accept as the economic consequences of what we call inflation.

But the question, Do government loans cause inflation? is one of those questions in which the dispute is apt to hang upon definitions. What do we mean by inflation? If we mean inflation of the currency, then the answer is that government loans may cause inflation, but that it can happen only through the use of special machinery whereby paper currency is deliberately put out on the security of the government bonds. This has occurred during the present war in the case of Russia, whose state bank, which issues the paper currency of the nation, has increased its note circulation \$7,500,000,000 since the war began, while increasing its holdings of Russian government bonds by \$5,600,000,000 and not increasing its gold reserve at all. It is so in a less degree in the case of France, where the Bank of France reports \$2,400,000,000 advances to the government for war purposes and \$600,000,000 for loans to the allies of France; against which obligations there has been an in-



crease of \$3,000,000,000 in the note circulation of the bank with no proportionate increase in its gold reserve.

It is difficult to say how far the increase of two thousand million dollars or so in note issues of the German State Bank is connected with loans on government bonds; but there is no doubt of that connection in the case of the German loan bureaus, which have issued \$1,500,000,000 currency, unsecured by a gold reserve, on all sorts of collateral. The process was at work in a degree during our Civil War, when note issues of the national banks were permitted only on the security of United States government bonds, and when \$236,000,000 of such newly issued bonds were acquired in war time for that purpose. But it will be observed that this is only a possible result of the policy of government loans, not a necessary one. It cannot be said that it is an inherent effect of such loans. It is not in any respect a probable direct result of our own war loans.

2) If by "inflation" we mean expansion of credit, then again the issue of government loans might have that effect, or it might not. Very large issues of new securities, whether by governments or corporations, will usually cause a large increase in the loan account of banks. Individual subscribers, when the loan is especially attractive or when (as nowadays) the motive of patriotism is invoked to increase the subscriptions, are apt to borrow from their banks money to pay their subscriptions. Most of them will expect to pay back such loans from their future accruing income. But the bank loans may be made permanent for the period of war or longer. In Germany they are explicitly made so.

3) But what most people mean when they talk of "inflation" is a third possible result—the abnormal raising of prices for commodities. It was undoubtedly this kind of inflation, as a consequence of large war loan issues, which President Wilson had in mind in his remarks on the subject in his war speech to Congress on April 2. He then said, regarding the financing of the war:

It will involve of course the granting of adequate credits to the government—sustained, I hope, so far as they can equitably be sustained by the present generation, by well conceived taxation.

I say sustained so far as may be equitable by taxation, because it seems to me that it would be most unwise to base the credits, which will now be necessary, entirely on money borrowed. It is our duty, I most respectfully urge, to protect our people, so far as we may, against the very serious hardships and evils which would be likely to arise out of the inflation which would be produced by vast loans.

This clearly has reference to inflation of prices. Let us see how the issue of war loans, taken by itself, would have that effect. We know from all economic experience that sudden and large increase of a paper currency irredeemable in gold will drive up prices. It will do so because prices will be quoted in that currency, and, since in due course the paper currency itself will be worth less than its face value in gold, "paper prices" will necessarily be higher than the previous "gold prices." In so far, therefore, as new government loans are made the basis for paper currency issues and that currency is not redeemed on demand in gold, the government loan policy will undoubtedly inflate prices.

But prices are sometimes driven up also through the mere fact of expanded bank credits. When every producer, middleman, or retailer, can get and does get on easy terms abundant credit at his bank, he will be in no hurry to sell. If he chooses, he may hold for higher prices, and the fact that demand is apt to be increased all along the line because easy access to bank credit will facilitate the paying of such prices by middleman, retailer and consumer. This explains the well known fact that rising bank reserves, easy money and constantly expanding bank loans, are an invariable accompaniment of what we call "good times," and that they figure both as cause and consequence of the rising prices which then prevail.

But is this the case with a bank loan expansion caused, directly or indirectly, by subscriptions to large government loans? That is the real question, and I cannot agree with what I understand to be Mr. Miller's position regarding it. Inflation of bank loans there may be, and inflation of prices there may be; but what we have to determine is, whether the government's bond issues caused both. I think the answer must be in the negative. When banks are compelled to expand their loans very heavily in order to facilitate subscription to the government bonds, there will be less, not more, in their legitimate credit fund to apply to ordinary commercial loans.

It is perfectly true that such a situation may be modified, through deliberate action of the banks, through special facilities offered by the reserve banks in rediscounting loans secured by the war bonds or through other causes. But we are talking now of the actual effect of the war loan issue itself. In that regard it ap-

appears to me that the ordinary credit facilities of the banks, which might be utilized to hold up prices in the commercial markets, will not be increased by the government bond issue, and that they may be very considerably decreased.

Such new credits as are obtained by subscribers to a war loan are spent in the subscription, and they are therefore evidently not available for any commercial purposes. No doubt the war bonds may themselves be used under the law to create new bank reserves through rediscount of loans secured by such bonds. But exactly the same thing may be accomplished through rediscounting of loans secured by commercial paper; and since the requirement of cash reserves in the federal banks fixes a limit to the aggregate rediscounts, it follows that the more of them a bank makes on the basis of loans secured by war bonds, the less it can make on the basis of loans secured by merchants' notes.

As to whether the rise of prices incident to any prolonged war would not be greater if the war is financed by government loans than if the war is financed by taxes, that is another question. Imagining that the present war, for instance, were financed solely by taxes, bearing heavily on every individual, the rise in prices would unquestionably be less than it has been. But that would be so, chiefly if not wholly because the weight of taxation would have made the average citizen able to buy very much less of the ordinary necessities than he had bought before. This, however, is something like begging the question, for the man whose means of buying necessities is cut off will scarcely be in a better position than the man who, with an unchanged income, has to pay more for them. If, as is the case in our present scheme of war taxation, most of it is raised by heavy exactions from very rich individuals, reduced personal expenditure may not result at all. A 60 per cent tax on a million dollar income will not compel that taxpayer to curtail his purchases of necessities. The public mind is sometimes apt to lay stress on the fact that proceeds of these huge loans are used in buying food and material on an unprecedented scale, and that therefore the loans cause the resultant high prices. But it is the government's purchases, not its borrowings, which act directly on prices of commodities, and since the war material must be had, in one way if not in another, the government demands would equally affect supplies and prices if the material were purchased wholly out of the proceeds of taxation.

The sum of the matter is then, that government loans, especially when issued in the present prodigious amounts, may cause inflation of the currency, but will not do so unless both the machinery to facilitate it and the disposition to undertake it are in evidence; that government loans will probably result in increase of bank loans to subscribers; but that the increase in bank loans for that purpose will of itself have no effect in the way of inflating prices, and might, through absorbing part of the credit fund usually reserved for commercial borrowers, act indirectly as a check to rising prices. The primary cause of the present high war-time prices is the enormous demands of governments in connection with the war, along with the impairment or blockade of many ordinary sources of supply. The secondary cause is the currency inflation and currency depreciation in Europe, which have indirectly affected prices (partly through shipment of gold from the depreciated currency markets) even in countries whose currency is not depreciated. That the government loans, except as they have been deliberately used as a basis for currency inflation, have in themselves been a cause for the rise in prices, I believe cannot be proved.

## WAR LOANS, INFLATION AND THE HIGH COST OF LIVING

BY CARL SNYDER,

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The relation of government loans to inflation seems more a question of fact than of theory. At least in a broad way there seems no inherent reason why such loans should cause inflation, or even expansion. A very large part of the loans is paid for by check—probably 75 per cent or more, so that the actual flotation means little more than a transfer of bank credits. There is no withdrawal from or addition to the currency of the country; therefore on the modern theory, no effect upon prices. And I am taking it that the question of inflation is purely a question of prices—that if there has been no rise in prices there has been no inflation.

### WAYS IN WHICH LOANS CAUSE INFLATION

But as a matter of fact such loans do cause credit expansion; and therefore the question is, how? Certain ways are obvious.

*First.* There is always a great deal of hoarded gold, in small sums and large. And there is nothing like a great national crisis and an offer of government bonds to attract this gold from its hiding places in safety deposit vaults and old stockings and the like. So, for example, Germany without importations from abroad, has since the war began nearly doubled its visible gold holdings. As you know it has even encouraged the melting of plate and jewelry of all sorts. This gold has been exchanged for bank notes, but the effect would not have been very different if the gold had been exchanged for government bonds and then been placed where it was most needed—in the banks—to build up credits.

*Second.* A government loan, unless the proceeds are sent abroad, means government spending on a huge scale; and there is nothing like this spending to speed up business and therefore prices. If it now happens that this falls at a time when the banks are not loaned up to the limit and have room for credit expansion, this expansion is pretty sure to take place. That was actually the case

last April when we entered the war. The banks were up to less than 90 per cent of what might be regarded as a normal safe maximum of loans; and they could therefore expand credits by at least a billion and a half, and conceivably a great deal more. If they could exchange for gold the billion or more of governmental securities which our banks have loaded up with since the war began, then even the normal expansion might readily be five or six billions; and as we shall see in a moment it could now be vastly more.

*Third.* Credit expansion naturally follows from the creation of a huge amount of good new bank collateral. Thousands of people will, in war time, buy bonds with the feeling that they can be realized on at any moment; and that moment usually comes for such people rather soon.

*Fourth.* A way has been, as it were, created by the new income tax law, assessing the unused surpluses of corporations at 10 per cent per annum. If these surpluses are converted into government bonds this tax can be avoided; and the bonds can then be used as collateral to 80 or 90 per cent of their face value and, under pledge of the banks, at the same rate of interest the bonds themselves bring. These loans reappearing as deposits, we should have then two deposits where there was only one before, and the credit currency has been expanded by a corresponding amount.

*Fifth.* In England and Germany, and probably more or less in all countries, the war has occasioned heavy government borrowings from the banks, these borrowings being repaid from time to time by the flotation of enormous loans. This borrowing, of course, being paid out to contractors and others, promptly appears as deposits and the volume of credit has therefore been expanded by about the amount so borrowed. This, in the judgment of *The Economist* of London, has been the principal form of credit expansion in England and chiefly responsible for a rise in prices of 135 per cent to date. So far this method has not been resorted to in the United States.

*Sixth.* There still remains the highly important matter of financing the loans themselves directly by means of bank credits to the buyers. This has been the chief means of flotation of the two loans so far put out in this country. I have asked several banking officials to estimate the extent to which it has been employed and they seem roughly to agree that on the first liberty loan for two

billions, the banks may have loaned somewhere near half the total, and on the second loan even more. No such expansion was evident in the national bank statements between June and September; but the answer of the bankers is that first, a large part of these loans was repaid with surprising rapidity, and second, that in this period there was a considerable curtailment of general business credits. The next bank statement will give us a better idea of the facts; for it is probable that the advances on the second loan would not be repaid so quickly, if for no other reason than that they may have been two or three times as large as on the first.

We see, then, that as a practical matter government loans may cause a heavy expansion of bank credits, and even, as in the case of Germany, a very considerable addition to the metallic basis of these credits. The question remains: When and how does such an expansion become inflation?

#### MONEY AND PRICES

Here is the old, old problem of the relation between money and prices. There may be modes of inflation which do not spell high or rising prices; but they are of academic interest only. In the same way there may be other ways in which prices may be inflated than by the simple one of currency inflation, but I do not think I shall go beyond the bounds to say that these have no practical interest. As to the main issue, we are coming finally to a general agreement.

For example, our general stock of money now is between four and five billions. I do not suppose there is an economist living who would suggest that the government could flood the country with an issue of say ten billions of paper money without an enormous rise in prices. This is what Russia has done and the general increase in prices there, a reliable index being lacking, has been estimated at from 250 to 400 per cent. The whole controversy has always been rather a question of degree. I am of those who believe that the whole problem was cleared up and put upon an inexpugnable basis more than thirty years ago by our own Simon Newcomb and Professor Shield Nicholson in Britain, and later by the statistical investigations of Professor Kemmerer and the splendid work of Professor Irving Fisher. The whole theory, as you know, is expressed with the simple formula that prices vary directly as the volume of the actual currency employed, and its rate of turnover or velocity, and inversely with the volume of trade.



Now as everyone knows, our main currency is in checks drawn against bank deposits. More than 90 per cent of the colossal exchanges of the nation, soaring now toward perhaps a thousand billions a year, are effected by means of checks. The volume of actual money in circulation is of slight consequence. Bank deposits in their turn are largely created by bank loans—80 per cent and more. The total of these loans is always many times the total stock of actual money. So, on the present-day theory, *the level of prices* represents a ratio between *bank credits* and *the current volume of business*.

I have found this simple fact very puzzling to many people. But it becomes very clear when we imagine the banks restored to their old note-issuing power and giving out newly printed bank notes when they make a loan instead of merely entering a credit in their books. Anyone can see that an excessive issue of such notes would mean currency inflation; and an excessive expansion of deposits has the same effect. It follows, therefore, that if bank credits are expanded more rapidly than the actual volume of business we have a rise in prices, that is to say, inflation. This is the whole matter in a nutshell.

Now what is the actual situation in regard to business in this country? The railroads cannot haul any more goods. The government is already stepping in to shut down on shipments on certain lines of industry. We cannot get any more coal unless labor is drafted from other industries. And as a whole we cannot get any more labor, as is evident from the fantastic wages that are now being paid. In a word, production, and therefore the actual volume of exchanges is practically at the limit and has been for a year or more. No expansion of bank credits can put this production any higher. It follows, therefore, as a practical fact that *any expansion of bank loans now means inflation—to all practical intents, dollar for dollar.*

#### EFFECTS OF CREDIT EXPANSION

Every scheme which increases bank credits spells increased cost of living and the discontent and social unrest that go with it, to say nothing of the genuine distress of millions of people whose incomes and salaries are more or less fixed and incapable of quick adjustment. With expanding credits, all the executive edicts and price fixings and food administrations in the world cannot keep prices down.

•

You might just as well think to restrain them with a bunch of feathers after you have put under them a 30,000-ton hydraulic jack.

Now if all this be true, in encouraging tremendous credits on the purchase of government bonds, the administration and our bankers have to that extent deliberately set out on a policy of higher and higher prices. The slogan "Borrow and Buy" means in its effect exactly the same as if the government had printed a corresponding amount of fiat money and turned it loose, as in the days of our Civil War.

The war has already added to the stock of this country a billion of new gold, which has resulted in a credit expansion of nearly 50 per cent and a rise in general prices of nearly 100 per cent. This means that the war will cost us, as it is costing England and other nations, roughly twice what it would have cost if there had been no such inflation. If we go on expanding banking credits at the same rapid rate, the cost of living and of the war will be doubled again.

And after all this inflation comes the inevitable deflation which always follows wildcat finance, just as it did in the years following the Civil War, with the result of making the burden of debt at least twice as great as it otherwise would have been if inflation had not been resorted to. One-half of the cost of the war in Europe has come within the last year and in turn the second year's cost was almost double that of the first. If we spend fifteen or twenty billions this year, it may readily mean thirty or forty billions next year, and if the war lasts three years more, as many believe it will, our burden of debt may readily reach a total of fifty or sixty billions, or more. The practical question then is whether this shall be met by "genuine saving," as the editor of *The Economist* terms it, or by some form of inflation, as has been true of all the nations of Europe?

#### POSSIBLE INFLATION UNDER THE RESERVE SYSTEM

I do not know how many among you have considered how far the inflation of our actual currency may go. The volume of checkable deposits is now around fourteen billions. Will it stagger you to know that a prominent New York banker estimated that bank loan expansion, if the war lasts, might readily reach *fifty billions*? And all of this is provided for under our new Federal Reserve System. It is strange how few people realize the perfectly fantastic possibilities of credit expansion which were created by the new

amendments to the Federal Reserve Act passed last June. Under these amendments the required reserves were cut more than half over those formerly enforced under the national banking system and instead of these reserves being in gold or lawful money, they are now to be nothing more than book credits with the Federal Reserve Banks. And in turn these banks have only to hold a 35 per cent gold reserve against these credits.

It follows, therefore, that every dollar of gold may become \$3 of federal bank credits, and each dollar of this may in turn become the basis of \$8 of credits for the central reserve cities, \$10 for the smaller cities and \$15 for the country banks, which works out to a practical average of \$10 for all the banks of the Federal Reserve System.

The Federal Reserve Banks have now on hand a billion and a half of gold. If the present movement to bring in all the eligible state banks, trust companies and the like is successful, this gold reserve may readily reach between two and three billions, and therefore serve as a basis for fifty or sixty billions, or more, of bank credits.

You will see, therefore, that the new reserve system has created possibilities of inflation never dreamt of since the Civil War. And all that stands between the general public and this inflation and the dizzy level of prices which it would bring in its train is the good sense and conservatism of our bankers, with such encouragement as they may receive from a political board at Washington and their political appointees, the governors of the Federal Reserve Banks.

So far this source of inflation has remained practically untouched.<sup>1</sup> Would it be possible to leave it untouched, no matter what the exigencies of the war? Is it the counsel of perfection to suggest that any great war can be fought without inflation? I know there are many able and conservative economists, as for example, Mr. George E. Roberts, who are inclined to doubt if it could. On the other hand, Mr. Hartley Withers, the editor of *The Economist* of London, has preached this very counsel from the

<sup>1</sup> *Note of December 5.* Since this article was written, this bank credit inflation seems under way on a gigantic scale. In a few weeks the loans of the New York banks alone have increased more than half a billion, an expansion without parallel in the history of the Clearing House. Coincidentally Dun's *Index of Commodity Prices* reaches the highest point in its history. Yet there seems not a single journal of influence in America, not a member of Congress, or senator who understands the problem or offers a word of protest or warning.

beginning of the war; and has unweariedly attacked the ineptitude of the British government and its makeshift finance. If such a policy would be possible to England with an ante-war income of not much over ten billions of our money, assuredly it would be possible for the United States with an ante-war income of at least three or four times this.

#### A PROBLEM OF EXPEDIENCY

The problem as I see it is the everlasting one of expediency. Obviously inflation is "the easiest way." As the slang phrase goes, it is "easy money." Our bankers feel highly patriotic when they turn in for a tremendous campaign for bond subscriptions; and Mr. McAdoo and the administration at Washington feel highly elated when they roll up five billions of subscriptions, half of which are merely bank loans. It seems to matter little that all this may add two or three billions to the already swollen credit currency, and that the millions of poor people, small investors and life insurance holders who cannot expand their incomes in any adequate way must pay the piper. These are the millions who rarely have any voice in national affairs, and all the more so because they are for the most part un-understanding and dumb. To them matters of finance and economics are a seven-sealed book, and there seems to be no one save the most ignorant and demagogic of politicians to give heed to their wrongs.

But the alternative to inflation would be a sharp curtailment of our reckless national extravagance; it would mean drastic saving and the almost total discontinuance, for example, of the manufacture of a million five hundred thousand new automobiles a year. It would mean a contraction rather than an expansion of credits. It would mean tight money and high interest rates. And all this is practically what no business man or borrower or any political administration ever wants. Everybody wants easy money, flush times and three rousing cheers for the success of a loan campaign, no matter how it is achieved.

It seems an idle consequence that we may spend perhaps ten long weary years of "hard times," of falling prices, declining business and sharp distress, paying for the orgy of inflated prices, waste and extravagance in which we are now indulging.

## PRINCIPLES OF EXCESS PROFITS TAXATION

BY T. S. ADAMS, PH.D.,

Professor of Political Economy, Yale University.

The following paper deals with a few of the larger problems of the excess profits tax; its scope and character, the general principles upon which it rests and with whose validity it must eventually stand or fall. In discussing these topics I speak not only unofficially, but tentatively; I express only my personal opinions, and those opinions are subject to later revision.

### I

The excess profits tax law itself fairly bristles with legal and administrative difficulties. Section 210, for instance, considering cases in which the administrative authorities are unable satisfactorily to determine the invested capital, provides another and a satisfactory method of determining the deduction, but says nothing about the rates of taxation which depend, in a very important way, upon the amount of invested capital itself—which amount, this very section assumes it is impossible satisfactorily to compute. In other words, at this part of the law there is an open chasm. The law, as it were, starts to bridge a gulf but terminates abruptly when we are half way across.

This is but one of the scores of problems raised by the excess profits tax law. It would be useless to attempt to settle them here. I mention them merely to suggest that any judgment of the fundamental character of such a law must be a charitable judgment. We must expect some inconsistencies. Any interpretation of the fundamental purpose and intent of the law will be sufficient if it harmonizes and synthesizes its main provisions.

The unusual technical difficulties of the excess profits tax have brought about a significant change in the administrative procedure of the Treasury Department. Breaking boldly with past departmental practice, the Secretary of the Treasury has sought to enlist the coöperation of the taxpayers themselves and has appointed a group of Excess Profits Advisors to assist the Commissioner of In-

ternal Revenue in construing and applying the law. This is an administrative departure so striking as to be almost revolutionary. Hitherto the taxpayer and the tax gatherer have held each other at arm's length. We have, as a people, come to look upon the taxpayer with suspicion, and the belief has grown up that the word of the taxpayer, or even his oath on a tax return, is likely to be untrustworthy and misleading. The great war in which we are now engaged, along with indescribable evils, has brought some priceless boons, chief of which is a deeper recognition of the necessity of co-operation. We must work together lest we all go down in the general collapse of democratic government. And among the forms and varieties of coöperation, the strangest perhaps, and not the least attractive, is the proposed coöperation between those who pay and those who collect taxes. Tax paying and tax gathering may be made different and far more wholesome things if this experiment with the Excess Profits Advisors be successfully carried out.

## II

"This title," the excess profits tax law reads, "shall apply to all the trades or businesses of whatever description, whether continuously carried on or not. . . ." The tax, therefore, is laid upon trade or business. But a preceding paragraph provides that every corporation or partnership not specifically exempt shall be deemed to be engaged in business, and that all its income, from whatever source derived, shall be deemed to be received from such trade or business. In the case of partnerships and corporations, there is but one business, one income; and the latter, with some specific exceptions, is the income returned for purposes of income tax.

In the case of the individual, however, the situation is probably different. True, professions and occupations are specifically included in the general category of trade or business, and we all know by this time that the excess profits tax applies to salaries. But in all probability, the tax does not cover, in the case of the individual, income derived from mere ownership, in which the element of active business management or personal exertion is substantially absent. In the debate upon the excess profits tax in the House of Representatives, Mr. Cannon pointedly asked whether income derived by "a

gentleman of leisure," as such would be subject to the excess profits tax. Mr. Kitchin replied with an emphatic negative:

I do not think in the case the gentleman cites that the individual would pay any excess profits tax, as he is not engaged in trade or business and has no profession or occupation. He, of course, would pay an income tax. The difference between the excess profits tax and the income tax is this: The income tax is upon the total net income received from all sources, with a few certain exceptions. The excess profits tax as now written in the bill is a tax on trade or business, including professions and occupations; that is, on the income or profits of trade or business, including professions and occupations.

But if an individual is in business—say in the mercantile business—and has investments in railroad stocks and bonds and receives \$10,000 from them, disconnected altogether from his business, that would not be included in determining the income subject to excess profits tax.

The fortunate individual, therefore, who "lives upon the income from his capital," will not be subject to excess profits tax, if Mr. Kitchin's interpretation of the law be correct. The salaries or fees of the typical professional man, the brain worker, are taxed. The man who risks his capital and puts his energy into a competitive business of the ordinary kind is taxed. But he who lives quietly on his rents, his dividends and his interest receipts, is not taxed.

Indeed, the whole status of the investor under the war revenue bill is a significant one. The income which he derives from securities may be subjected to very heavy income tax. But the new income tax law, in a section which I shall not quote in detail though it deserves careful exegesis, provides with significant exceptions that dividends shall be taxed to distributees at the rates prescribed by law for the years in which the profits or surplus (from which they are paid) were accumulated by the corporation. As a result of this provision, millions of dividends distributed this year will not be subject to the heavy war income taxes but will pay at the lower rates applicable in the past. Moreover, in its final formulation, the war revenue bill omitted a clause previously adopted by the Senate which prohibited those contracts by which the borrower or debtor undertakes to pay any tax imposed upon the interest or income going to the lender or creditor. This, I say, was stricken out. The result is congressional endorsement of a practice which, in most foreign countries, is regarded as contrary to sound public policy. We encourage, in short, the multiplication of those covenants by which debtors undertake to pay taxes levied in the first instance upon creditors.



I raise these questions concerning the status of the investor in the scheme of war taxes, not for the purpose of criticism, but to bring into clear relief some of the larger aspects of our general tax policy. So far as dividends and the excess profits tax are concerned, the case is clear. The corporation from whose earnings dividends are paid, being duly subject to excess profits tax, the individual may with logic be exempt. So far as interest from bonds is concerned, it is plain that, so long as the individual is accorded a deduction of 7 to 9 per cent upon his invested capital, the inclusion of bond interest among the other items of taxable income or profits would be fruitless. The Treasury is better off with interest omitted from income and principal excluded from invested capital.

And yet, a doubt persists. Is a scheme of taxation sound which imposes heavy taxes upon the salaried man, or the man who stakes his time and money in the hazardous game of business, and yet shields the man who lives upon the income from his capital? Here are three men, each with an income of \$100,000 a year. A has little or no capital, except his brains and technical equipment which will disappear at his death. He is taxed. B puts \$100,000 in a risky business which, at the present, pays generously. He is even more heavily taxed. C inherited two and a half million dollars from his father, invested perhaps largely in state, municipal and federal bonds. He pays little or no tax, local, state or federal. Speaking generally, a given income backed by a very large amount of capital ought, it might seem, to be more heavily taxed than the same amount of income backed by a small capital. Yet our excess profits tax, in company with a majority of such taxes in other countries, proceeds on a different principle. "To him that hath shall be given, and from him that hath not shall be taken away even that which he hath."

When a suitable opportunity occurs Congress should, I believe, impose a differential tax on "unearned" income. This would remedy what seems to be a marked defect in our existing scheme of federal taxation. At the same time income derived from personal exertion should be given further study. Corporations already have the right to deduct the salaries of officers. The same right should be given to partnerships and sole proprietors, although the estimated salaries would have to be "reasonable."

## III

The line of thought which we are here pursuing leads inevitably to a challenge or criticism of most direct taxes imposed upon business or the business unit. Let me illustrate. Here are two corporations, each with the same capital and the same net earnings; but corporation A is owned by a large number of small investors (working men and mechanics perhaps), while corporation B is owned by three millionaires. Drastic taxation on the profits of A and B will have very different effects upon the two sets of stockholders. The mechanics and working men who jointly own A will be deprived of extra war dividends which they may really need to meet the increased cost of living; whereas the owners of B will merely be deprived of unnecessary luxuries or the wherewithal to make new investments. The challenge or criticism under discussion amounts then to this: that an income or excess profits tax of any variety upon a business unit is illogical; that its principal incidence and burden are upon the stockholders; that there may be relatively strong stockholders in weak corporations and very weak shareholders in strong corporations; that so far as possible, we should avoid the intermediary, the agent, the go-between, and employ only the personal income tax. At the basis of this criticism will be found an assumption, conscious or unconscious, that all direct taxes are to be judged by the ability standard—to be accepted or condemned according as they conform to, or depart from, the principle of taxation in accordance with ability to pay.

At this point it is pertinent to note that the difficulty under discussion is not to be remedied by any substitution of the war profits principle for the excess profits principle, of the English for the American method of computing the tax.

Here are two corporations, each with \$1,000,000 capital and each earning \$300,000 a year during the war, but whereas corporation X earned \$200,000 in the normal, or average year before the war, corporation Y earned only \$80,000. Under the English law, with its pre-war income standard, corporation Y would be taxed very much more heavily than corporation X, which is in reality the stronger corporation. Both corporations earn the same amount during the war, but the one which was more prosperous in the past, the one which has accumulated the larger revenues, the larger surplus against a rainy day, would, under the English law, pay the

smaller tax. As a matter of principle, neglecting the practical difficulties of applying the capital standard, it is difficult to see any superiority in the English method of war profits taxation. Does pre-war prosperity establish just ground for exemption or immunity during the war? Do not extra war profits added to a high level of pre-war profits create an unusual capacity to bear taxes, rather than the reverse? If you and I are equally prosperous today, but I have been prosperous much longer than you, is my longer prosperity sufficient reason for levying a smaller tax upon me than you?

As a matter of theory, and in the average or normal case, I believe that these two standards, the income standard and the capital, are essentially similar. In the long run, the real invested capital depends upon normal earnings. Our illustration of corporation X and corporation Y was in fact false and misleading. It represents an impossible case. If corporation X had enjoyed profits of \$200,000 a year as a regular and normal thing before the war, its true invested capital could not, except by accident, have remained at \$1,000,000. Its capital assets, tangible and intangible, would have come to be worth \$3,000,000 or more; they could have been sold for that amount; and individual investors would have bought stock on that basis. In the normal case, the income and capital standards are, when properly interpreted, practically the same.

But we must get away from the "original investment." Where mature and well-developed corporations are concerned that concept has little meaning. The original investment has no permanence. It changes inevitably. Durable assets, such as land and buildings, depreciate and appreciate; and these variations may at times be taken up on the books and they will certainly be taken into account in any case of sale or consolidation. Intangible assets are built up and in turn disappear. The true capital, the true investment, changes with the shifting level of income and with future prospects based upon such income. Of course, if we take only the income of two or three years before the war, there is no necessary correspondence between such income and the true capital of the business. But what chanced to happen in the three years which preceded the outbreak of the war is not and should not be controlling in this connection. Even if we accept the pre-war profits standard, its logic requires that we ascertain pre-war earnings over a sufficient number of years to obtain a true or normal average; and over such a series

of years no industry, except a monopoly, can earn upon its true capital an abnormal rate of profits. In short, if we could satisfy in practice the logical requirements of both methods it would make little difference in the vast majority of cases whether we employed the income or the capital basis.

#### IV

The American excess profits tax of October 3, 1917, was passed after a stubborn and protracted legislative contest, in which one idea, vaguely called the excess profits principle, triumphed over another idea usually referred to as the war profits principle. This victory of "excess profits" over "war profits" is very significant. Its significance does not lie in the substitution of a deduction of exemption based upon capital for one based upon income. As has just been pointed out, these two methods are in the last analysis, if consistently applied, so closely related as to be almost one and the same. The significance of the American law, or of its adoption, lies in the fact that it represents a deliberate rejection of a pre-war standard in favor of a normal standard. War profits taxes must, it would seem, be short lived. An excess profits tax might, conceivably, become a permanent fixture in our financial system. Base the tax on excess of present earnings over pre-war earnings, and with each passing year the basis of the tax becomes more antiquated, more impossible. Base the tax upon excess over a fair return on the investment, properly measured to start with, and with each passing year the tax may become sounder and more equitable. The government asserts, as it were, a right to share in any abnormal or unusual profits realized by the business man. This is at once the peculiar promise, or the peculiar menace, or the peculiar scientific interest of the American excess profits tax—as you are inclined to look at it. It is likely to prove the most revolutionary development in public finance since the introduction of income taxation.

#### V

If the tax is to endure it must meet the fundamental criticism mentioned in the beginning, that, in common with most taxes imposed upon the business unit, it does not conform to the principle of ability to pay.

It is a shallow and narrow interpretation of this principle that

tests its every application by the effect of the tax upon the consumer; which surveys man, the taxpayer, only as one who clothes his back and feeds his body. There are many valid varieties of this great principle of taxation and among them are those which survey the taxpayer in his capacity of producer, which take the business man in his economic and political environment, which recognize the truth that the state and community stand as silent partners in every business enterprise, which make a permanent place in our revenue system for a tax designed to take for the community a fair portion of all profits in excess of the amount required to elicit the requisite investment of capital. Such a tax would be in true conformity with the ability principle; it would spare the infant industry; it would spare all industries during periods of depression; it would encourage industrial experimentation; and would lay the heaviest burden upon those who have been most fortunate. It solves, in a reasonably satisfactory way, the difficult question of finding a graduated or progressive tax for business enterprise. It may possibly supply, what is even more difficult to find, a practicable and equitable method of business taxation.

The tax contains, like most good ability taxes, a distinct element of the benefit principle. The English courts have decided that the English excess profits tax represents the state's share in the profits of private business; and the American law—by refusing to permit the deduction of an excess profits tax as a business expense of the year in which paid—apparently partakes of the same character. It is not a tax upon the individual to be judged by the sacrifices which it imposes upon him, but the prior claim of the state upon private profits which public expenditures, or public misfortunes, or the general environment maintained by the state, have in part produced. The government's claim to part of the profits, particularly in time of war, is so strong as to justify the statement that the stockholders have no claim on profits until the government has released them. When a special assessment or betterment tax is imposed, no cognizance is taken of the individual's ability to pay. For much the same reason, when an excess profits tax is levied upon a corporation or partnership, no cognizance need be taken of the tax paying ability of the shareholders. We must have business taxation because business units, as such, benefit by the activities and expenditures of the government; because they have, as business

concerns, differing "abilities" to pay; because the state cannot wait for the distribution of profits from the business source to the ultimate recipients; and because taxes levied at the business source are far less expensive to collect, and far more productive in yield, than those levied upon the individual partners or shareholders in business organizations.

## VI

What I have been considering is the eminently practical problem of the future of the excess profits tax; will it endure—should it be permitted to endure after the war?

I do not pretend to give the final answers to these questions even in my own mind. But they are questions about which we should begin to think seriously. It is sometimes said that the country which imposes an excess profits tax after the war will so hamper its business as to deny it any share in the international trade of the world; in short, that it will place domestic industries at a disadvantage in competing with foreign industries.

Whether this criticism be sound or unsound depends upon many factors, among which must be included the relative burden of all taxation in this country as contrasted with foreign countries; the equity and care with which this and other taxes are formulated and administered; and most of all upon the truth of the theory upon which the tax rests. It is either true or not true that the success of business enterprise depends, in part, upon the helpful participation of the state. This is either genuine truth or humbug. If it be a genuine truth, business can afford to pay for the assistance of the state. If it be merely false and hollow rhetoric, American business enterprise will fall before foreign competitors which do have the real support of their respective governments. In general, what business fears is not heavy taxation, but unjust and discriminatory taxation, careless taxation, bungling attempts to do the impossible, inconsistent taxation, the unlike treatment of like business situations.

Such a tax might serve appreciably to allay hostility to big business by making the people a partner in the success of big business. As pointed out several years ago by Henry C. Adams, such a tax fits in harmoniously with the policy of rate regulation or price regulation. We shall probably have more of such regulation as time goes on; and this regulation must, in all probability, be accom-



plished through general rules which, adapted to the less favorably situated producers, yield excessive returns to the more favorably situated producers. Under such circumstances, a tax upon excess profits makes the results of price regulations more equitable and more attractive. Some such device as this would appear to promote individualism and private industry. Not only land sites, as Henry George emphasizes, but other commercial and industrial opportunities differ enormously. We cannot give to each industry the same opportunities of location, proximity to markets, good shipping facilities, good credit institutions and good government; but we can make inequalities a little less by imposing a tax upon the differential product—upon excess profits. Conceivably then the excess profits tax may assist materially to promote that equality of opportunity which is as necessary to good business as to good citizenship.

Lack of productivity will probably prove the gravest weakness of the excess profits tax as a permanent part of the tax system. In normal years we cannot expect a tax upon supernormal profits to yield the enormous revenue which we expect to derive from this source during the war. And yet, it is probable that even in lean years the tax would supply a revenue altogether worth while. In our vast country it seldom or never happens that all sections and all industries move together. When there is drought or financial depression in one part of the country, other sections enjoy abundant crops and prosperous business conditions. Where an epidemic prevails the doctors, at least, do a thriving business. There will always be some excess profits to tax.

But if the tax is to succeed, we must solve this problem of establishing a sound normal basis from which to measure the excess. In determining this normal datum line we can, as has been stated, use either past income or invested capital; indeed the difficulties are so great that we should make use of both. It would be theoretically possible, for instance, to take the income for a considerable number of years, exclude the abnormal years and accept the remainder as our datum line. But even in this case we should have to make allowances for the increase in capital; and for this and other reasons, the United States, in contrast with most of the other thirteen or fourteen countries imposing the excess profits tax, prefers to start with the capital basis.



Even with this basis we are forced to rule out those capital assets which are the product of abnormal conditions. For instance, no serious consideration was ever given, or could practically have been given, to the proposition that the capital basis of the tax should reflect the abnormal profits earned during the war.

In getting rid of abnormal capital items, however, many of those interested in this subject have gone to the other extreme. They believed that capital should be taken or valued as of the time of original investment. Curiously enough, it may be said parenthetically, this principle is adopted in the English law in so far as that law makes use of a deduction based upon capital. The difficulties engendered by starting with the original investment are enormous. Some corporations are fifty years old or more and the exact amount of cash or tangible property paid in, and the circumstances surrounding such payment, have disappeared in the mists of time. On the other hand, many corporations have gone through formal or genuine reorganization within the past few years. Some old corporations have written upon their books the appreciation which has taken place in their real estate and other property. Other old corporations have not done this. Some corporations have so handled advertising and similar costs that they stand on the books as capital assets, designated "good will," "trade-marks," and the like. Many other corporations, having brands or similar intangible assets of great value, have written off as current expense the advertising and similar expenditures made to develop or create these intangible assets. Some corporations have bought good will for a very large sum and within the next few years have written it entirely off their books. Other corporations carry the original expenditure as a capital asset. To go back to the original investment in each case is to treat essentially like situations differently; to introduce distinctions so capricious as to be maddening; to discriminate in a way that raises the gravest questions concerning the constitutionality of such treatment.

My own belief is that the most practicable treatment yet suggested for this situation is a valuation of capital assets as of some date, say January first, preceding the war. We must get rid of the war, that greatest of all abnormalities. To some degree this solution has been utilized in the capital definition adopted in the Excess Profits Tax Act of October 3, 1917. Tangible property paid into a

corporation for stock may be valued with some reservations as of January 1, 1914. How far under this statute actual valuation may be substituted for original investment; how far Congress intended this substitution to be made and how far the courts will sustain a rigid insistence upon original investment values, are grave questions which cannot be answered at this time.

This much may be said, however: we must start with a practicable and reasonably equitable determination of normal capital value. Until this foundation of the tax has been built, and built upon rock, the excess profits tax can only be a temporary makeshift.

## THE WAR REVENUE ACT OF 1917

• BY DANIEL C. ROPER,

Commissioner of Internal Revenue.

This article is written by me, not as Commissioner of Internal Revenue, nor as tax collector, but as a student of our mutual problems. I shall not undertake to recite in it all of the problems which confront us, in administering this law. Dr. T. S. Adams, who is so ably assisting in this work, has prepared for this issue of *THE ANNALS* an excellent article on this subject, as have also many other writers.

I shall not afflict you with the burdens that I see ahead in the way of administering this tax. To do so would be unkind. This may be illustrated by a little experience some years ago in a southern town. A tourist train rolled in to a town of some 2,000 population. One of the tourists, jumping off of the car, approached an aged colored man and said, "Will you tell me the population of this town?" "I don't know as I zackly understand what you mean, sir," the old man replied. "How many people live here, then?" "Well, sur, I don't know zackly,—'bout a million." The old darkey probably saw the future development of the town. This is quite analogous to the volume of problems which will confront us in the course of the administration of the new War Revenue Act.

This act is now the law of the land. It is a fundamental principle of democracy that the people shall tax themselves. The essential strength of democracy, especially in the time of war, lies in this fact. Through the passage of the War Revenue Act of 1917 the people by well-nigh unanimous vote of their chosen representatives in Congress have levied upon themselves additional tribute of substantially two and one-half billions of dollars to meet the war needs of their forces on land and sea.

For months the country and the Congress were divided in opinion as to methods of raising the money which all agreed was necessary for the common defense. The legislation enacted by Congress for financing the war has definitely settled all such differences. The greater part of the huge total sum immediately needed is to be raised by the sale of liberty bonds, thus allotting to our pos-

terity its fair share of the burden and deferring to more settled times its final distribution. The first two issues of liberty bonds, aggregating eight billions in amount, have been taken by the people with an alacrity that speaks the patriotic determination and enthusiasm of a united country and must reassure our defenders as it disturbs our foes. But the financial provision through the sale of bonds is not adequate to the needs of our great cause. In addition to this it is essential to our success and to the proper support of our sons who are risking their lives that the people of the United States immediately pay a large sum into the country's Treasury in the form of a liberty tax. This is no less essential than that of the liberty loan which this tax underlies and supports. The liberty tax represents that portion of the burden which we assume and discharge for ourselves while the liberty loan represents that portion of the burden which it is only fair for us to remit to those who shall come after us.

The law providing for this liberty tax has been determined upon by the people's representatives in Congress. It is law, but the actual administration and collection of the taxes is one of the greatest war tasks now confronting the people and the government.

This is no time to cavil at the manner of amounts of government expenditures. The government as well as business must gradually become adjusted to new conditions. Congress has acted, certain agencies have been charged with the duty of administering, others with the duty of expending. Both must act speedily and co-operatively for the enemy is at the door, liberty and its institutions are in imminent danger. The price of its defense cannot be excessive as related to the lives and happiness of our people.

This is the greatest tax levy ever undertaken in the United States. In more magnitude it surpasses any previous draft on the treasure of the people. It exceeds all others in the wide range of its provisions and in the variety of its incidences. But the purpose for which this tax is being raised is the most serious to which the Republic has ever been devoted. The need for every dollar of return due under the law is the need of continued national existence. And at the same time, the necessity of retarding or disturbing as little as possible the economic forces and operations of production and distribution was never before so imperative as now.

The problems of administering the War Revenue Act of 1917

are receiving most earnest consideration by the Secretary of the Treasury and his assistants. A policy has been outlined and the general principles to be observed have been established. This policy is to collect from every citizen the full amount which Congress has determined to be his just contribution to the nation's need with the least possible inconvenience to the citizen and the least possible disturbance to business and industry. Any other program or policy of administration would injure our cause and help the Kaiser.

There must be a way to administer this law constructively and this highway we will earnestly seek. It is essential to proper administration that each taxpayer shall be able to obtain accurate information as to the amount of tax due by him and the time, place and method provided for its rendition and payment. This is indispensable because the law puts upon the taxpayer the burden of making the returns upon which his tax is measured. It is likewise essential that each class of taxpayers be treated with intelligent regard for the circumstances by which they are personally affected, or which affect their businesses or avocations and to the end that the machinery of adjudication and collection be widely and uniformly diffused; that the correct construction of every part of the law be authoritatively determined and all doubts as to such construction be as far as possible removed; that the willingness of all classes of people to aid in the scrupulous observance of the law and their eager desire to be of service in helping to win the war be organized and utilized to promote the uniform and universal enforcement of the law; and that each citizen be given the utmost assurance that no other citizen will be permitted in any wise to evade the law which he himself is fully and loyally complying with.

To attain these ends is a task of organization and administration. The first step necessary is the reorganization of the Bureau of Internal Revenue at Washington. A veritable transformation is required to expand this branch of the Treasury Department to assume the greatly increased burden laid upon it by the War Revenue Act. For this purpose a new alignment of its forces has been projected, additional divisions have been created, responsibility and authority rearranged and defined and preparations made for a large increase of its personnel. The need of these things is forcefully evidenced by the fact that for the year 1918 it is reliably estimated

that there will be 6,350,000 income tax returns made to the bureau as against 780,000 for the year 1917. From its organization in 1862 until the passage of the corporation tax law in 1909 the bureau was constructed for collecting the taxes on fermented liquors and tobacco, requiring more of a policing procedure than is necessary now. We now need men especially trained in business administration and accounting lines—men who can intelligently approach and wisely deal with our complicated society. One phase of the reorganization of the bureau is of especial significance in this connection. Steps will be taken to bring the tax gathering machinery into closer touch with the best unofficial thought and with the public generally. It is hoped to accomplish this by the appointment of certain business men as advisors to the Commissioner of Internal Revenue on business conditions and by the creation of an office in the bureau to be known as Supervisor of Taxpayers' Coöperation.

On the twenty-fourth of October the Secretary of the Treasury announced that he would appoint certain persons as excess profits advisers on business conditions to assist the Commissioner of Internal Revenue in construing the excess profits provisions of the War Revenue Act. These will be men of high standing as economists and directors of business. They will bring to the administration the viewpoint of the taxpayer. It is not intended that these persons shall exercise administrative functions. Their task will be purely advisory. The earnest desire of the administration is that the excess profits tax may be so correctly and discreetly applied that each business enterprise may render to the government the full amount due, without embarrassment and without abatement of its productive power. This also is in recognition of the accepted necessity of treating special conditions in a special way.

The legal review advisers, the proposed appointment of whom was announced by the Secretary of the Treasury, simultaneously with that of the excess profits advisers, will be recruited also from unofficial life. Eminent representatives of the American bar will be given opportunity to give their service for advice to the Bureau of Internal Revenue. The new law presents many problems of construction and interpretation which are fraught with grave consequences to the public revenue and to business. These advisers will be an assurance to the country that these problems will not be dealt with in a narrow way, but that they will be solved in the light of

the broadest and most constructive legal knowledge and experience available.

The third new agency in the organization of the Bureau of Internal Revenue for following up this intimate association of business and government in the administration of this war revenue measure is the Supervisor of Taxpayers' Cooperation. His task will be to keep in touch with the public and collect and assimilate for the department business suggestions and also to diffuse correct interpretations of the law and administrative regulations through all possible channels to the taxpayer. In an informal way, a nation-wide organization of cooperation will be created. In furtherance of this plan the formation of local advisory committees will be encouraged through which it is hoped to enlist the voluntary assistance of patriotic citizens. This service must be purely unofficial and voluntary. As stated, these local committees will be composed of citizens volunteering their services to aid in facilitating the selective draft of wealth. It is proposed that these shall make a special study of the law and of the published aids furnished them from Washington. They will give information and advice to the taxpayers in their communities, direct local propaganda for cooperating with the government agents in the collection of the liberty taxes and keep the department informed regarding the general administration of the revenue law.

A most wholesome sign of the unity and patriotism of the American people is the manifest widespread desire to find a way in which the citizen may help the government in this critical hour. Thus it is the purpose of the government to invite the cooperation of all patriotic citizens in the full and fair performance of the great task of fairly administering and collecting the war tax—in that way to afford the citizens whom circumstances may require to remain at home an opportunity for real service in the great cause for which their sons and brothers are fighting. May we not hope to make the liberty tax, by reason of its patriotic purposes and by reason of the fairness and justness of its administration, a popular tax even as the liberty loan has been made a popular loan? As well stated in a splendid editorial in *The Saturday Evening Post*, "One of the finest things in the Civil War was the way in which citizens stepped up and paid their income taxes when they could have dodged them if



they had wanted to do so. We expect that chapter to be repeated in this war."

The literature which comes to me from this Academy is most instructive and effective and as the administration of the war tax law must largely be a campaign of education I earnestly solicit the continued sympathetic attention of your body to the important questions arising under it. It is probably the most important opportunity for patriotic endeavor now presented to you. Your country needs the character of advice which you are especially trained to give as much as it needs the service of the trained soldier at the front.

## LIQUIDATION TAXES

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It is indicative of the advance of economic thought that in the present war its main controversy should turn on the relative merits of taxes and loans. There are few economic principles but which are put in a fresh light by the discussion which bids fair to make as important changes in economic theory as did the famous rent controversy during the Napoleonic wars. This older discussion emphasized the presence or absence of an unearned element in income. Land incomes were put in a separate class with a resulting pressure to relieve industry from taxation by putting the burden on land revenues. The sweep of free trade doctrines could hardly have been as complete as it was if the rent controversy had not preceded it. We may expect a like transformation of economic doctrine if the relative merits of taxes and bond issues are settled as permanently as were the issues involved in the discussion of rent and free trade. Every great fallacy in thought discovered and removed makes possible new adjustments not only to nature but also between the various social groups on whom industrial efficiency depends.

The evils of taxation, however, do not make bond issues good nor those of bonds make taxes the only way to meet national burdens. Earlier controversies revealed that protection was bad without proving that free trade was good; that paper money made a disastrous form of inflation without showing that other expedients did not have like evils; that rent was an unearned income without giving an economic justification to kindred forms of income. In each case the advance consisted in barring out one expedient without increasing the respect for the others. I anticipate a like result in this case. I doubt if the opposition to taxation will be reduced by the controversy but I believe that in the end bond issues as an expedient to carry on a great war will have no better standing than paper money now has. We must learn to get on without bonding just as we have learned how to promote industry without protection or to meet urgent obligations without a resort to paper money. Nor

do I wish this paper to be viewed as an eulogy of taxation; but I desire to show that large bond issues are a fatal expedient, something that we cannot use without the danger of social disintegration. Beyond this I wish to show that its reputed advantages are illusory, destroying and not conserving our resources. It would be useless to show this if it were not accompanied with positive information as to how to devise an adequate tax system. If we do not want the public to use patent medicine we must provide sane remedies. In the same way the opponent of bond issues must show how extraordinary expenses can be met without their use. The present task is to devise a system that will meet the need for revenue and yet avoid bond issues to the same degree that a sound financial system avoids paper money

#### OBJECTIVE TESTS

Economics is now becoming like physical science in that only objective tests are used. So long as economists asked how do men feel about certain measures no reply could be made but to test these feelings, or to appeal to certain supposed innate principles at the basis of human psychology. There was no way to determine these feelings except in small communities composed of like individuals. The method used was to assume a typical man and to get at the assumed advantage or disadvantage by multiplying the sum of his feelings by the number of the people concerned. Such a method fails in a great nation with many classes and many grades of income each resulting in certain feelings peculiar to his class. This complex cannot be summed into a whole because the advantage of one group may arise from the disadvantage of another. We thus have society split up into a number of classes each with its own measures and each assuming the falsity of other standards than those it uses. From this confusion there is no exit except by discarding all subjective measurements and by proceeding according to objective tests such as physical science employs. Great advance has been made in recent years in collecting the data by which objective tests can be applied. We are now in a position where objective tests will produce better results than subjective methods. What we feel and what we know in many fields clash. Only as we suppress the feeling and permit the facts to guide can we hope to attain the objective adjustment on which the permanent prosperity depends. We may

blunder along in times of peace because the cost of bad action is not severe enough to strangle the life of a nation, but the drain of a war is too great to permit of the waste which our feelings in times of peace encourage. In war the nations or group of nations will win which succeeds in preventing waste. We may outrage our feelings without serious loss if we conserve our resources. The older subjective economics thus fails to solve our problems. It is the newer objective science to which we must resort.

### THE PHYSICAL COST OF WAR

The first problem to face in this objective way is the physical cost of the war. We are so used to figure in terms of values that we seldom think just what these values stand for. Values are estimates based on income and grow or decline as income is altered. If the return from property is estimated at 4 per cent instead of 5 per cent we immediately assume we are to have a quarter more wealth. If a property yields \$5,000 instead of \$4,000 we immediately assert that we are correspondingly more wealthy. Our estimates which make us as a nation worth two hundred billion dollars are of this nature. No one has made an actual investigation to find what property we have. We estimate its amount from the revenue it yields. But mere values cannot carry on a war. War destroys physical goods and their amount fixes the contribution which each nation may make. The cost of the war is the destruction of these goods, losses for which fresh labor is needed to replace. We may through inflation think we are getting rich because values rise and yet we may be losing the basis on which our prosperity depends. On the other hand we may lose much that hurts our feelings, and yet be as capable as ever of prosecuting the war. We often lament the loss of non-essentials more severely than that of the more substantial elements of personal welfare. Our estimates must conform to the latter standard if we would know what are the real losses which the war imposes. It has recently been reported that the crown prince of Germany goes about with rags in his tires because of the lack of rubber in Germany. I do not know how the crown prince feels about this. Certainly our papers make much of the supposed loss of dignity which it imposes. But if the story be true the physical burden which the crown prince imposes on Germany is a slight one. He might estimate his injured feelings by the million but in physical

terms they would not be worth noticing. It is also said that the ladies of Germany are now compelled to wear wooden shoes because of the lack of leather. Here again we have a severe subjective loss, due to the imposed degradation, but measured in objective terms the wooden shoes place but a slight burden on the national resources. A million iron crosses have been distributed to German soldiers. The joy of this may be great but the physical cost is slight. In contrast it is said that in Paris the demand for jewelry never was greater than at present. If the Germans take their reward in iron crosses while the French demand gold and precious stones the one has a slight physical burden of the war while that of the other is heavy. The physical cost of supporting the German people is probably not over 60 per cent of what it was before the war. This leaves about 40 per cent to be devoted to military purposes. A long war of the present magnitude could be indulged in on this basis if the civil population will put up with their present sacrifices. War is a shifting of expenditure not its increase. In contrast to this the physical cost of supporting the allied nations has probably increased. Their war burden is thus an extra burden that cuts in on physical resources. The increase of the physical cost of supporting America's population is perhaps 20 per cent greater than before the war. We think ourselves worth forty billion dollars more than five years ago and rejoice that we are free from debt instead of owing billions to foreign investors. But this estimate of values is subjective. In proportion to population our physical output is not much greater than it was ten years ago.

#### WHERE WAR BURDENS SHOULD REST

It is the misfortune of discussions of taxation that investigations start with the wrong problem in mind. That men feel badly when taxes take from them their income may be taken for granted but to measure these feelings is an impossibility. Discussions of justice and morality likewise involve subjective elements which no one can measure. They are matters of feeling and it is inevitable that each one should view his burden in the light of his education and class interest. In a complex society like ours this leads to a useless wrangle about the shifting of taxation making taxation a distributive problem with all the uncertainty in which every problem of distribution is involved. Good taxes thus become those which

somebody else pays. We should not tax the laborer because that reduces his standard of living. We should not tax capital because that would limit production; we should not tax profits because that would reduce the motives for activity. And so it goes, with the result that our revenues are inadequate to meet expenditures. It only puts off the evil day to issue bonds, for in the end new taxes must be imposed to meet the increasing deficit. It is therefore a new attitude which is needed and not a further elucidation of our feelings and antipathies.

Taxes are burdens on some one's income. What principle should we employ to impose them? If objective instead of subjective tests are to be used there can be but one answer: *taxation should fall on advantage*. It is what one person has which others have not that should bear the burden when taxes are imposed. Every invention, every change in production, every increase of human energy, every economy in consumption creates a surplus which abides. This may be reserved for public benefit or be permitted to pass into private hands to be used in personal consumption. An increase of taxation means a larger use of this fund for public purposes. In times of peace but a small part of this surplus is taken for national uses. In this country not more than 10 per cent has been demanded; but under new conditions especially in large cities a greater proportion is needed by the public. The war has thus forced the nation to face a problem which time would in time have forced on public attention. Instead of 10 per cent, the nation now needs 30 per cent if revenues are to meet current expenses. Some objective measure of advantage must be found by which the burden may be so distributed that production may be interfered with to the slightest degree. Our feelings and class prejudices must be set aside and the facts faced.

#### THE MEASURE OF ADVANTAGE

The Ricardian theory of rent was the first to state the difference between earned and unearned income and thus to show that land rent was a surplus to which the recipient was not entitled for any legitimate service. This fund has rightly been held as a fit object of taxation for on it taxes may be placed which will not be burdensome to industry. So far good, but a curious intrusion of a psychic fallacy gave it a one-sided interpretation which permitted a sound

doctrine to be used for class advantage. It was assumed that the subjective cost of labor equalled the pay it received and thus all the surplus of society went to the landlord as rent. The wage fund theory was responsible for this view but its repudiation by later economists has not yet led to the broader view which newer doctrines permit. I shall make no attempt to measure the feelings of the worker of today. For aught I know he may feel worse working eight hours than his forebears did working twelve hours. He may also get less pleasure out of meat and bread than did his ancestor from the meager diet which earlier times permitted. But objectively considered he does share in the surplus modern industry has created and this fact, not his class feelings, should be considered where taxes are laid. But the error here is a slight one in comparison with the type of reasoning other classes use to justify their income.

It is assumed by the capitalist that he has a subjective pain in saving which corresponds to the rate of interest he receives. He asserts that the return on typical investments yield no surplus above the pain of abstinence and that therefore his income should be exempt from taxation. But if we use objective measures we see that the possession of capital exempts him from much misery which other classes are forced to endure. When we see the acts and the pleasure of capitalists it is hard to reconcile their plenty with the existence of a pain not revealed in their looks. Objectively the possession of capital brings pleasure and a freedom from evil. These facts and not their hidden ills should be considered by the government when it is deciding on public policies involving sacrifice. The shortcomings of the subjective standards are equally evident in the field of income. The larger income does not imply increased exertion or greater sacrifice, but a better education, better health, more energy and more fortunate conditions. Objective evidences of suffering are absent and instead there are many evidences of exemption from life's ills. Income is thus the measure of advantage and not of effort, of situation and education and not of heredity. If this income is due to education a pleasant school life replaces the early toil of those deprived of schooling. If the difference is in heredity the gains are due to what happened ages ago and not to the recipients of present income. How can a white man claim that his superior income is due to his personal exertion as compared to an



individual of the colored race? His advantage is as much unearned as is that of the landlord who lives off the proceeds of a favorably situated lot.

In the same family or in the same racial group the superiority of income due to the presence of superior traits is not the result of what the recipient has done but of his good fortune. Inheritance is not an even result going alike to all members of a family or group. The Mendel laws of unit inheritance shows that traits may be recessive in particular individuals and dominant in others. Two brothers may thus have radically different traits although their ancestry is the same. The superiority of the few over the many is a valid inference of the Mendel laws. Only a few have an abundance of those traits which make for financial success. In a rough way it may be said that of four children with like inheritance one will be superior, two mediocre and one a failure. This is about the proportion of strong and weak which we find in actual experience, thus giving a practical verification to the law in question.

To make my point I need not show in just what proportion the income of the nation will be distributed among these groups. The essential point is that the traits of the superior individual are not due to his exertion but to his advantage. This may be in education, in position, in race or due to the operation of Mendelian laws but after all it is advantage and advantage should be taxed. This does not mean that A who has an advantage has no better claim to it than B who is without this advantage. It is not the distributive problem that I am trying to settle. The real problem is what claim has the state to the income due to the advantages which the favored persons or classes have? There can be but one reply. The state represents the past and the future; the present recipient of income only the present. His superior income is due to the past of which the state and not he should be the heir. The permanent needs of the whole community are thus placed above that of particular persons and the future in which these individuals will not participate gets the advantage of the accumulations of the ages which become objective in present income.

In the use of these objective standards only two classes should be recognized; those with a deficit of income and those with a surplus. Ideally the line dividing the two classes is that income which permits the continuation of family life under normal conditions

coupled with a complete nutrition of all its members. It is not enough to preserve individuals; we must preserve the family. This means a childhood free from toil and an old age without care. Couple these facts with the cost of complete nutrition for the family at all times and we have the sum that divides a life of deficit from one of surplus. This line is not hard to determine for we have the facts that show the cost of family nurture. Eight hundred dollars represents a minimum as prices were before the war. It is certainly not less than \$1,000 at the present time. Those below this limit lack in a physical ability to contribute to the war. Those above the limit have a surplus they could spare. As against the claims of the state no class sharing in this surplus has a special claim to consideration above other classes. All families below the accepted income should be regarded as the nation's wards and treated accordingly. Were we to give them more instead of depriving them of what they have, the national surplus would be increased and the net power to carry on a war would be enlarged. By this I do not mean that these struggling families cannot be made to contribute to the support of the war. But their contribution must come through increased efficiency and not through imposed burdens. Just those things which we should have done in times of peace but neglected to do should be done on a large scale in war time. We should reduce sickness, cut down the hours of labor, have better sanitation and teach new ways of living which will promote economy and efficiency. All these measures and many more like them can be suggested which will increase the national surplus and thus enable the prosperous to bear more readily the burden of the war. But the taxation of the nation's wards is always detrimental and gives no compensations which enable others to carry on the war.

Nor do I mean that we should not encourage thrift and help people below the normal income to shift their consumption in ways that permit saving. This we would do in times of peace and should do more persistently in war time. But the means of doing this are misunderstood because of a lack of appreciation of the motives of the poorer classes. There is among them but little appreciation of distant welfare. The pressure of immediate wants is too great to inculcate a vision of the future happiness but there are strong motives to provide for such objects as they visualize. A poor family will pay high rates to insure a proper funeral for a dead

child although no motive exists to educate the living child. Much saving takes place to bridge over epochs of unemployment and some to provide against sickness. A little higher up in the scale of living the desire to own houses is an effective motive causing building and loan associations to thrive. In country districts the ownership of farms makes an appeal which is effective so long as land is of low enough a price to permit a purchase. But all these motives fail when future weal stands alone. In a 4 per cent railroad loan a farmer will not invest and the lack of motive is still greater among the industrial workers whose saving motives are more difficult to arouse. But this does not mean that these people may not be appealed to by a war loan. The rate of interest, however, must be much higher than that now offered. The lesson of the war will show that the "big stick" disguised in forms of patriotism will not increase saving above its present amount. High rates of interest would do this with the effect not only of helping to carry the war to a successful close but of transforming a large part of the nation's wards into normal citizens. But this change should be voluntary appealing to motives which the nation's wards understand. It is their psychology and not that of the upper classes that we should study. If this is done the primary burden of the war must fall on those with a surplus income who now have their wants supplied above the minimum of well-being.

It is this objective surplus and not profit commercially considered that must be found and measured. The subjective elements in older estimates made the costs of production seem larger than they are. If I pay thirty dollars for a suit of clothes I pay for certain material which must be replaced and for certain quantities of food and shelter which workers require. But much of my thirty dollars goes to compensate the feelings which producers have. This sum need not be paid or its payment may be delayed. The owner of horses estimates their cost by the food he gives them and by the cost of the care involved in their keep. He does not regard the feelings of the horse nor put their equivalent in his estimates of cost. If from day to day they show no deterioration in objective appearance he regards the sum given for their support as his expense. The same is true of a population. The physical cost of a people is the amount needed for bodily welfare. The difference between this cost and the output of industry is the surplus.

Whoever shares in this has something which he might give up without reducing industry and this amount fixes the limit of taxation. When we realize this we can see why Germany stands the burden of the war so well. The people grumble and occasionally revolt, but there is no reason why this burden should not be borne for years if the will of the German people is equal to the sacrifice demanded. What they have done we can do on a larger scale because our surplus measured objectively is much larger than theirs. When it is asked can the proposed war expenditures be borne by the American people there is but one answer to be made. They can be borne and even more than the proposed ten billions can be set aside without cutting in on the sum needed to repay physical costs. But if it is done there must be no waste nor any compensation for outraged feelings. If we do what we can and avoid what we should we can bring the war to a successful close.

Many contend that in some way a part of the burden of the war may be shifted to future generations. To them the advantage, why not to them the cost? The difficulty in this solution is that the cost of war is in present goods. It is what we have which must be given for war ends and not what our descendants may acquire. War is a consumer whose needs cannot be postponed. The soldiers are preferred consumers, who must be cared for better than before. It is only the residual left after the war needs are supplied which the public can have. War thus forces a transfer of the social surplus from those who now enjoy it to those engaged in military operations. Each year of the war must therefore square its own accounts unless at the beginning of the war there is a stock on hand which may be used for the initial expenditure. Before America entered the war the accumulated stock of the world had been used up. Our problem is thus a simple one. We must save from ordinary consumption enough to supply the needs of our army. This reduced consumption may be forced, or voluntary, and the two methods of financing the war hinge on the difference. Forced saving operates through an increase of prices. The consumer has to pay more for goods with the same or a reduced income. He must therefore contract his consumption. The high prices make profits and the government borrows the net gains of the profiteer to carry on the war. Forced saving by this process turns over a part of the people's daily consumption to the recipients of high prices. What the people save is

thus given to a privileged class and they loan it to the government.

This is the essence of carrying on the war by means of loans. The people pay for the war by their reduced consumption, the benefit of which goes to the profiteer. In the end the people pay for the war a second time when they redeem the loan through future taxation. The people thus make additional burdens for themselves at some future time. *War loans are war profits.* They are the gains which favored individuals make from the war and do not in the slightest way reduce the burden borne by the people. This is not a new doctrine but one often explained by economists. But sound economic is lost sight of in the stress of a financial situation and old fallacies blossom forth with the freshness and vigor of new creations. If the high prices were occasioned by an increase of paper money, the advocates of it would have to blush for their logic, but when the same inflation is produced by a bond issue a quibble is possible which permits a flood of new argumentation over a point long ago settled. In any real sense inflation is an elevation of goods above their physical valuation. One can readily see that an increase of paper money deceives people as to their real possessions and entices them to expend above their means, and thus causes an overconsumption which brings on a crisis. Bond issues have the same result in another way. At a time when wealth is decreasing it seems to be increasing and thus induces people to expend lavishly when their consumption should be curtailed. We are said to have had two hundred billions of wealth at the beginning of the war. The government spends twenty billions leaving one hundred and eighty billions. The public instead of seeing this and acting accordingly add the twenty billions of bonds to their wealth as though it were an addition instead of a loss and call themselves worth two hundred and twenty billions. This is a deception like that of paper money inflation and equals it in its bad effects. Did this doctrine deceive only the common people it might be put up with, but editors, bankers and government officials are equally carried along with the current of popular thought. Our national income before the war was estimated at thirty billions. A member of the Federal Reserve Board recently said it was now fifty billions. Just how the destruction of the war could increase the income of the nation by a half he did not explain. It is plain he was adding in our losses as though they were

a gain and thus deceiving himself as to what our real income is. This attitude is so general that it cannot but encourage the opinion that the war can be carried on with a profit and hence permit of an increase of consumption at the very time when a sharp contraction is the only means of saving the nation's credit. Our great task is to make people realize the need of economy and this can be done only by saner estimates of the effect of the war on property and income. The entire amount by which value exceeds property is an inflation which can be cured only by the reduction of property values to their normal level. Government bonds are not the only form of inflation nor did the rise of prices begin with the war. It was going on in the dozen years of advancing prices before the war. The two hundred billions of wealth we were supposed to have at the beginning of the war really contained fifty billions of inflated values. It would have been a different task to have found one hundred and fifty billions of actual property at that time. If now we use twenty billions in war expenditure and add this amount to our reputed wealth every dollar of our actual wealth will be estimated at double its amount and be the basis of a double expenditure.

Our annual expenditure may be fifty billions but if so there is a big gap between receipts and expenditures which will soon bring the nation into financial straits. Bond issues are not a way out but a species of deception for which the public must pay a heavy price. They suffer and pay for the war; they will suffer and pay again when the bonds are redeemed. And there will come the greatest suffering of all in the financial crisis which brings inflated values back to a normal basis. Three payments and perhaps five are what this financial method imposes. Our liberties are worth the price, but before payment is it not worth while to ask how can a war be carried on with but one payment and with no inflation of values?

A good system of taxation involves more than a decision as to taxes and the machinery for their collection. The theory of values and equivalents is involved and with them must be correlated all the other mechanisms by which prices are influenced. Important among these are the restraints on consumption. We may let prices go up, and then tax people for the additional amounts needed or we may restrain consumption so that the amount saved flows into the government's coffer without an increase of price. If a third of the annual expenditure for goods must be turned over to the state, re-



strictions will effect this more readily than taxation and must be the major means by which the transfer is wrought. A prohibition of liquor traffic would reduce the demand for goods and thus prevent the rise of prices to the level they otherwise would reach. Another inroad might be made by checks to conspicuous consumption. A third of what the nation consumes has little bearing on physical welfare and on this part effective restraints should be placed.

A policy of education is needed as well as of restriction. Evolution exerts a steady pressure in changing consumption from more to less costly means of gratifying human wants. If the restriction operates to favor evolution the change is permanent. The broken habit of custom will not be restored when the restraint is removed. But if the change is a mere blocking of urgent desires then the removal of the restraint means a sinking back into an earlier state with a vast amount of increased dissipation. This relapse is too often seen after the restraints of war are removed. An epoch of dissipation has a train of evils worse than war itself. These facts make restraints and education of such importance that no scientific scheme of taxation can be made workable without their aid. On the one hand they cut down the eagerness to spend and on the other they force adjustments which abide. It is to them and not to bond issues to which the nation should turn and when they are in operation the real burden of the war can be met by taxation. Taxation is not a sham pretending to give when it really takes. It is a present burden which cannot be shifted to future generations.

Distributive problems are out of place in a scheme of taxation because they confuse the public as to the point at issue. Property owners like to talk of shifting the burden on someone else and popular agitators are likewise fond of showing how this is done. If either are right my position is unsound. If both are wrong then a view of taxation is possible which will show where the burden really lies. The whites of the south may get satisfaction out of the burdens they place on the negroes and among the latter suffering may result. But if we disregard these subjective feelings the net result is that the whites put a heavy financial burden on themselves by this repression. An increased efficiency of negroes would mean an increased income for themselves. There is no way they can shift this financial loss on other shoulders. So too employers may get satisfaction by discharging workers at will but they cannot avoid the large labor



turnover that results. Every downward pressure on workers decreases their efficiency and reduces the net surplus of industry. It is impossible, therefore, to put a burden on workers that will not take from employers more than the laborers lose.

If the prosperous must bear the ultimate burden and any attempt to shift is only at their cost it is not difficult to decide where new taxes should be imposed. They should fall on the net surplus of society, and should be proportioned to the surplus of each class or individual. The income tax seems best fitted to meet these requirements but in reality it has a defect which makes its operation one-sided. Income is a measure of immediate advantage but not of ultimate advantage. Suppose the income of a given industry is increased by \$50,000. This is income and rightly to be taxed. But the presence of this income will increase the value of property by a million dollars if interest is 5 per cent. This million dollars the income tax does not reach but is as fit an object of taxation as is the original income. The ultimate advantage of an increased national return thus shows itself not an income but in increased capitalization. It is this untaxed capitalization which new taxes should reach.

If the prosperous object to this solution can they shift the burden on any one else? If twenty billion dollars in bonds are issued instead of the needed liquidation of values they start an inflation which produces a still greater deficit. Every financial scheme to shift the burden breaks on this rock. It produces suffering among other classes but gives no relief to the net burden of the prosperous. Every deceptive device comes back to claim compound interest. They can pay for the war once if they pay the bills as they come due. They can pay for it as many times as they please by trying to make future generations pay. An individual may escape his burden by schemes that put the burden on others. He may take his chance in a panic and gain where others lose. But these devices do not take the burden from the prosperous. The individual who avoids his just burden punishes his friends and not the laborers or the community. They will suffer but their suffering brings no relief to the prosperous. All improvements increase net income; all burdens fall on it. Were this simple proposition once understood we might face greater burdens than this war will impose and still remain financially sound. The burden of today will come back to the pres-

ent holders of income in the surplus of tomorrow. If inflation is an evil then it must be met by cutting down the national valuation of assets until they correspond to our physical possessions. We must not deceive ourselves into thinking we have two hundred and fifty billions of wealth when we have only one hundred and fifty billions, nor can we think that war is a process of increasing wealth when it merely inflates values. A liquidation tax is the only means of meeting this situation. If a man is worth two hundred and fifty thousand dollars and had one hundred thousand in debts he would not be made poorer by paying his debts and having one hundred and fifty thousand of clear wealth. The situation of the nation is this on a large scale. We spend money but instead of recognizing it we cover it up by calling our liabilities assets. To tax the nation ten billions does not differ in its ultimate effects on wealth from a bond issue to a like amount. In either case we are ten billions poorer. In one case we see it and adjust our expenses accordingly, in the other we rush on into new extravagances. A risk is run for which there is no compensation.

It is therefore the present inflated values which should be reached by any sound system of finance. A liquidation should be forced which will bring inflated values down to a level with physical valuation. People are not made poorer by this process. They are put in a position safely to take advantage of new industrial opportunities. We should therefore take a stock of national wealth and make an assessment against it. He who gets the surplus when the nation prospers should pay back when the nation is forced to enlarge its expenses. The income tax is one means of reaching this surplus but a far larger part of it goes to increased values and hence stands on the books of each individual as property. The increase of values is thus a legitimate source of taxation and it is this increase which should meet the special burdens of a war. We cannot get at the annual increase of values as readily as of incomes because incomes are regularly reproduced while it is often years before an increase of property values shows itself. A ten-year period would meet the situation fairly well and if a decennial revaluation of national wealth were made the increase thus revealed should be used to meet emergencies. If such a scheme were adopted the first assessment should be on all property for we have no ready means of distinguishing its parts. But the scheme once in operation would permit

subsequent taxation to be based on the increase of values. In practice it would work out something like this. I assume that it would be combined with an inheritance tax and that the rate of taxation is 5 per cent.

<i>1918</i>	<i>Amount of Property</i>	<i>Tax 5 per cent</i>
Howard Smith	\$240,000	\$12,000
<i>1928</i>	300,000	
	<u>-240,000</u>	
	\$60,000	3,000
<i>1932</i>		
Estate of Howard Smith	\$320,000	16,000
Howard Smith Jr. (Inheritance)	120,000	6,000
<i>1938</i>		
Howard Smith Jr.	160,000	
	<u>-120,000</u>	
	\$40,000	2,000

It is plain that the net wealth of this family is not reduced by the liquidation. They are merely put in a sound financial position and thus avoid the penalties which wild financing imposes. Nor does it prevent the regular increase of values which is the legitimate result of national property. They are only prevented from over-estimating the real increase and thus checked in the tendency to over-indulgence. A good financial scheme combines restriction on consumption, and a process for the liquidation of debts. Scarcely any use is made of restriction; the rate of interest offered is too low to encourage saving and the process of liquidation has not even been discussed. It is necessary to use treasury notes freely for the proceeds of taxation come in too slowly to meet current expenses. But short-time notes should not be issued until expedients are adopted to redeem them. We may properly ask the banks to carry temporary burdens but government bonds make for them bad permanent investments.

If these legitimate sources of revenue are avoided the only remaining expedient is a bond issue. The burden of the public is thus

an indirect one. They pay for the war through high prices which make profits for other people to invest in bonds. War bonds and war profits are thus the same fund and force a double payment in the end by the people. Such financing is easy for the first year, makes difficulties the second year and creates impossible conditions in the third. If we are to go ahead according to present plans it is to be hoped that German resources are nearing exhaustion. It will save us from many threatening evils.

## A CRITICISM OF THE WAR REVENUE ACT OF 1917

By J. F. ZOLLER,

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The purpose of any tax legislation should be to get the maximum amount of revenue with the minimum disturbance to business. In considering any taxation scheme we must have constantly in mind that there are at least two classes of taxpayers which are usually taxed, namely, individuals and corporations. A tax upon a corporation, so far as a corporation can be taxed at all, is a tax upon the stockholders who own the undistributed shares in the property of the corporation. Therefore, a tax imposed upon a corporate body is excessive as compared with taxes upon business transacted in other forms or upon individuals not engaged in business, necessarily constitutes a discrimination so far as the incidence of the tax is concerned against a certain class of individuals.

Originally, all taxation was based upon the theory that the owner of the property taxed received certain benefits from the government imposing the tax. In other words, it was a tax upon benefits received in connection with the privilege of living in a civilized community. From time to time, however, there has been a growing tendency to depart from such forms of taxation based upon benefits derived from the government and to substitute therefor a tax upon ability to pay. This has been the result of a growing tendency to establish a doctrine that those best able to pay should contribute more liberally to the public burden.

It is manifest that an *ad valorem* tax upon property must necessarily be based upon the theory of benefits received and without regard to ability to pay with the possible exception that persons owning property may be presumed to have some ability to pay taxes, although we all know that certain classes of property may in some cases constitute a liability to the owner instead of an asset. Net income taxes, on the other hand, are based almost entirely upon ability to pay with very little regard to the benefits received, with the possible exception that any person deriving a net income and living in civilized society must be presumed to have received some

benefit from the government in the protection of his property from which the income is derived or received. Thus there has gradually grown up in the United States and elsewhere a tendency to impose net income taxes instead of direct taxes upon property.

An investigation of the subject shows that net income taxes have been very generally imposed in the following European countries: Austria, Belgium, Denmark, Greece, Germany, Holland, Luxemburg, Finland, France, Norway, Sweden, Switzerland and Italy; also in the Cape of Good Hope, Hawaii, India, Japan, New Zealand and Australia as well as in the United States. Not only have net income taxes probably become a permanent means of raising revenue in the United States by the federal government, but they are gradually being adopted by many of the states. For example, the state of Wisconsin for a number of years has had an income tax upon both individuals and corporations. This tax is not in lieu of any tax upon personal property, but the individual or corporation subject to the income tax is permitted to deduct from the income tax the amount of any tax paid upon personal property. The state of New York, on the other hand, has adopted an income tax upon manufacturing and mercantile corporations, which tax is in lieu of any tax upon corporate franchises or personal property of such corporations. A number of the other states have imposed income taxes as a basis of determining the amount of tax to be paid as a privilege of doing business in such states in corporate form.

The income tax in theory is probably the most equitable method of taxation because it is not imposed unless the taxpayer has secured a net income during the year and therefore should have the necessary funds with which to pay the tax, the individual whose net income is nil not being required to pay any tax for the benefits he may have received from the government.

While the theory of this tax is most equitable, its application in many cases under certain income tax laws has brought about the grossest inequality. If the taxation system of any jurisdiction is inequitable fundamentally, the imposition of an income tax in addition to all other taxes will not remove the inequalities existing prior to the imposition of the income tax. For example, a number of the states have been imposing upon corporations taxes called franchise taxes and said to be upon the privilege of doing business in a corporate capacity and being in addition to all other taxes upon the property

paid by individuals not doing business in corporate form. A franchise tax upon a corporation in addition to all other taxes upon the property is a discrimination against individuals holding corporate securities and in favor of individuals whose property does not consist of corporate securities. There would appear to be no sound reason for imposing upon corporations by any jurisdiction a tax upon the corporate franchise in addition to taxes upon the property of the corporation. If the property is fully taxed the corporation has paid a tax upon its franchise which has been reflected in the value of the property.

The method of doing business in corporate form has become a necessity and there would appear to be no reason for penalizing an efficient instrument of business. It necessarily follows that, if it be economically unsound to tax corporations upon their franchises in addition to a tax upon their property, the imposition of the franchise tax measured by net income does not in any way correct the wrong principle and such income taxes are not income taxes as those terms are generally understood, but, on the other hand, constitute a tax upon corporate franchises which under all conditions is economically unsound even though measured by net income. Therefore, those states which have imposed a franchise tax measured by net income have in no way progressed, so far as taxation is concerned, but have simply ascertained a convenient means of measuring an inequitable and unjust tax.

If it be wrong for the states to impose a tax upon the privilege of being a corporation or for transacting business in a corporate capacity it is equally wrong for the federal government to impose such taxes. It therefore seems to follow that the capital stock tax imposed by the federal government upon corporations, which is a franchise tax and is not imposed upon partnerships and individuals in competition with corporations, is inequitable and unjust and should not have been enacted. It is no answer to the argument to say that the federal government needed the revenue, because the amount of revenue which can be raised by any jurisdiction depends upon the wealth of the community imposing the tax and within certain reasonable limits the rate under a just tax law can be made sufficiently high to secure all possible revenue.

It has been the history of taxation throughout the states that the states are unable to impose, administer and collect an *ad valorem*



tax upon personal property that absorbed too great an amount of the income from such source. Therefore, the progressive states are fast departing from the imposition of any *ad valorem* tax upon personal property and are substituting therefor either a classified personal property tax at a reasonable rate fixed by the legislature or an income tax measured by the amount of net income. Those states which have made the income tax a tax in lieu of some other tax which could not be collected with full justice to the taxpayers at large have undoubtedly taken an important step in the right direction, while those states that have simply imposed the income tax in addition to all other taxes have in no way removed any of the inequalities which existed prior to the enactment of the income tax, and the only virtue in the income tax in such cases is the amount of additional revenue which has been raised as a result of the tax, and additional revenue is not always a virtue.

There would be no difficulty in the imposition of the income tax if all individuals did business in the same way so that the amount of the tax would be the same in all similar cases and the tax equally distributed over all individuals enjoying a net income. Business is transacted in this country by individuals as such and by corporations. Corporations are nothing more or less than an aggregation of individuals. Therefore discrimination against corporations is a discrimination against the individuals interested in the business transacted in such form. It may be possible to impose a tax either upon the corporation or upon the stockholders, but it is not possible to impose the same tax upon both the corporation and the stockholders without imposing two taxes upon the same individuals. If other individuals, that is, those who are not transacting business in corporate form, are taxed only once it of course is an unwarranted and unjust discrimination to tax the individuals who are transacting business in corporate form twice. Great difficulty has been experienced in imposing an income tax upon corporations without doing the injustice referred to.

It is probable that if all the earnings of a corporation were distributed as fast as they were earned to the individuals comprising the corporation then an income tax upon all individuals having a net income would bring about an equitable distribution of the tax burden and without any serious disturbance to the business conducted by the corporation. It is because such bodies do not always see fit

to distribute the earnings made that there has grown up a necessity of attempting to tax the stockholder by placing the tax upon the corporation and then permitting the stockholders to deduct from their individual incomes the income already taxed to the corporation. This method is correct in theory but has not been duly carried out in all cases. The theory has been partially worked out in the taxation of corporations by the federal government where it has been found necessary to impose a part of the income tax upon the corporation upon the theory that the earnings might not be distributed to the stockholders and the payment of the tax upon such earnings prolonged for an indefinite period unless the corporation were taxed for the year the earnings were made.

In order to avoid double taxation it is provided under the federal income tax law that for the purpose of the normal tax, individuals shall be permitted to deduct from their total net income the amount received as earnings or dividends from corporations which have been subjected to the tax upon their earnings. This is a correct theory, but Congress refused to carry it out in all cases for it did not permit under the Act of October 3, 1911, nor under the Act of September 8, 1916, corporations to deduct from their net earnings dividends received from other corporations which had already paid the tax, although such deduction was permitted under the original Act of August 5, 1909, and is also permitted so far as the additional war income tax is concerned under the Act of October 3, 1917. The Act of October 3, 1917, imposes two income taxes upon the net income of corporations, that is, it extends and perpetuates the Income Tax Act of September 8, 1916, which imposes a normal income tax of 2 per cent and then imposes an additional normal income tax of 4 per cent upon corporations.

Under the Act of September 8, 1916, as amended by the Act of October 3, 1917, corporations are not permitted to deduct dividends received from other corporations that have been subject to the same tax, while they are permitted to deduct the income from such corporations under the 4 per cent provision of the Act of October 3, 1917. The obvious purpose of permitting corporations to deduct the dividends received from other corporations under the 4 per cent provision of the Act of October 3, 1917, is to prevent double taxation of the same earnings, and is an acknowledgment upon the part of Congress that such earnings should not be doubly taxed. If this

be true of such earnings under the 4 per cent provision of the Act of October 3, 1917, it is equally true in regard to the 2 per cent provision under the Act of September 8, 1916, as amended by the Act of October 3, 1917, and there should not exist this inconsistency in the Act of Congress and this discrimination against corporations as compared with the taxation of partnerships and individuals in competition with corporations. Individuals, whether they are doing business as partners or as individuals, are permitted to deduct all dividends received from corporations made subject to the tax, and the same privilege should have been accorded to corporations.

Right here it might be well to note another discrimination in the imposition of the income tax under the Act of October 3, 1917. By that act there is imposed upon corporations an additional tax of 4 per cent upon net income, whereas the additional rate upon individuals is only 2 per cent. Therefore those individuals whose property consists of corporate securities are discriminated against when compared with other individuals.

In the imposition of income taxes generally it has been believed to be equitable to increase the rate of tax by a progressive scale whenever the amount of net income exceeded a certain amount. This is evidently upon the theory that ability to pay increases to such an extent with the increase in the net income that a flat rate of tax upon all income does not reach a proper proportion of ability to pay in all cases. The tax at the progressive rate as distinguished from the tax at the flat rate is known as the additional or surtax.

The theory of the surtax has always been that it should not be imposed or applied except in cases where the total income exceeded a certain amount. Upon this theory it is at once seen that an additional or surtax cannot be imposed upon a corporation because a tax upon the corporation as we have seen is a tax upon the stockholders and if the additional or surtax is imposed upon the stockholders by a tax upon the corporation it must necessarily be imposed regardless of the total amount of net income received by any particular stockholder contrary to the fundamental theory of the additional or surtax. Therefore, in order to carry out this correct principle, when the income tax was originally imposed by Congress, no additional or surtax was imposed upon corporations but such taxes were imposed upon all individuals regardless of the source of the income, provided the total net income exceeded a certain

amount. There is probably no way by which a surtax or additional tax can be imposed upon the corporation without doing violence to the principle that the surtax shall not be imposed except in cases where the total net income of the individual exceeds a certain amount thereby placing him in the class with ability to pay the surtax.

The excess profits tax if it had been imposed upon corporations alone would have amounted to an additional or surtax upon the corporation and would have done violence to this principle. This fact was evidently recognized by Congress as well as by the British Parliament in the imposition of the excess profits tax, for in each case the tax was imposed not only upon the corporation but upon partnerships and individuals as well in the hope of making an equitable distribution of the burden among all individuals as a tax upon business regardless of the character of the owner of the business.

It is extremely difficult to get an equitable distribution of an excess profits tax owing to the different methods of transacting business. It is probable that this system of taxation would not constitute a part of any well regulated tax system in times of peace. It is because in times of war certain businesses are extremely prosperous that it is thought equitable to take by taxation a part of the profits resulting from the war and use them for the purpose of conducting the war. This was the theory of the European excess profits tax acts and was the theory of our war revenue bill in the form reported to the Senate by the Senate Finance Committee. As the bill was finally passed, however, it became not a tax upon war excess profits unless the pre-war profits happened to equal from 7 to 9 per cent of the invested capital for the taxable year, but a tax upon profits exceeding a certain arbitrary percentage of capital.

As to all corporations whose pre-war profits did not fall within the special class, the tax under our War Revenue Act is not a war profits tax but an excess profits tax without regard to pre-war earnings. Therefore our tax upon excess profits at a sliding scale rate of 20 per cent to 60 per cent is not at all comparable with the war excess profits tax of Great Britain at the flat rate of 80 per cent. It might very well happen in a number of cases that our tax at a progressive rate of 20 per cent to 60 per cent would be much more burdensome to business in this country than the English tax upon war profits only, at the flat rate of 80 per cent, because in England only

abnormal profits resulting from the war are taxed while under our war revenue bill it is quite possible that the tax in many cases is based upon normal profits which bear no relation to the war. In England it was ascertained that the three years immediately preceding the European War were prosperous years for English concerns. These concerns were guaranteed a continuation of this prosperity free from the war excess profits tax by being permitted to select the two most prosperous years of these three prosperous years as a pre-war basis and all profits over and above the average profits of these two most prosperous years were taxed at a high rate but with full knowledge to the investing public that the normal profits of prosperous years would be guaranteed free from such tax.

It is of course less disturbing to business if the government can secure its revenue by a tax upon abnormal profits guaranteeing to the investing public a normal profit free from tax, than it is to place such tax upon normal profits and in the absence of such guarantee. As stated at the outset the object of any taxation scheme should be to produce the maximum of revenue with the minimum of disturbance to the business taxed.

Our revenue act on the other hand does not guarantee any freedom from taxation of all pre-war earnings, because as we have seen in a number of cases, our excess profits tax may fall upon normal profits or profits which have not increased or which perhaps have decreased since the war began. Our revenue act is not based upon war profits but may more properly be said to be based upon ability to pay upon the part of the business taxed, Congress having assumed arbitrarily that any earnings over and above a certain arbitrary percentage of the invested capital represent ability to pay taxes, to the extent of the exigencies of the government. It is probable that if each business could be treated separately, it could be ascertained in the case of each particular business what would constitute a reasonable exemption for the particular business. It is probably equally true that if each business, regardless of its nature or hazards, is permitted the same rate of deduction based upon the capital invested the scheme will necessarily bring about inequalities, taxing some businesses upon earnings abnormal and some upon earnings that are only normal or possibly less than normal.

It would seem that if it be found advisable to impose an excess profits tax instead of a war excess profits tax, that is, a tax based

upon earnings in excess of a certain arbitrary amount instead of a tax upon earnings resulting from the war and in excess of normal earnings of the business in each case, then some reasonable attempt should be made to classify business in regard to the hazards of the business so as to determine what the deduction should be in regard to each class of business taxed. An arbitrary deduction of 9 per cent on the capital invested, for example, is probably insufficient to guarantee to certain classes of business a fair return upon the capital invested free from the tax while it is probably more than sufficient for such guarantee in the case of other classes of business.

In the imposition of the capital stock tax the United States Treasury Department has officially determined that a certain class of corporations geographically located in a certain way must earn a certain amount on the capital invested in order to make the stock worth par, while other classes of corporations, or the same class differently located geographically, must earn an altogether different amount to make the stock worth par. This fact established by the United States Treasury Department is a confirmation of my contention that you cannot set up an arbitrary allowance of percentage upon capital invested and apply it generally to all business without favoring certain classes of business as compared with other classes.

In closing I want again to say that the object of any tax legislation should be the maximum amount of revenue with the minimum of disturbance to the business taxed. A tax upon an individual, as such, apart from his business, who ultimately receives all business profits, can probably be borne with patriotism without disturbance to business enterprise, but a tax upon business whose credit depends not upon patriotism or anything emotional but upon sound business finance, if sufficient to interfere with such credit, may upset the whole financial and commercial structure of the country, and the result of such business disturbance is much worse in times of war than in times of peace and probably produces more suffering among the people as a class than any tax ever laid upon an individual as a personal tax.



## WAR AND FINANCE IN RUSSIA

BY HIS EXCELLENCY, THE RUSSIAN AMBASSADOR,  
HON. BORIS BAKHMETEFF.

Finance is unquestionably the most essential element in the material end of any warfare, and this occasion gives me the best opportunity to emphasize again the splendid help which this great country is giving at present to the Allies by financing their purchases. Experience has shown that the expenditures of war have increased year by year, the different nations being obliged to keep pace in their financial plans with the requirements, and gradually adapting their policies to the development of demand. The United States entered the war when the military operations in Europe had reached their full swing and when on the other hand financial resources had been greatly exhausted. This government, therefore, has had no opportunity for steady and gradual development of financial methods. At the outset this country had to face the necessity of organizing its national military mechanism on a scale adequate to present European practices. In addition, the general conjuncture imposed the necessity of undertaking the most extensive financing of all allied countries.

The United States was thus obliged to face from the very beginning an annual war budget of over twenty billion dollars, thus in the first year equalling the whole of the expenditure of any European country since the beginning of the war. A financial problem was thus set before the government and the people of this republic, which both in magnitude and spontaneity has probably never had a precedent in the history of state finance.

The solution of this problem depends not only on the ability and mastering of statemanship, but relies to the greatest extent on the willingness of the people to contribute to the success of the governmental undertaking. It is in the patriotism and in the readiness to carry the burden of increased taxation, to moderate individual consummation, and to respond with all possible means to the appeal of the government to support loans, that there lies the possibility of success. It is the united effort of democratic action that is de-



manded by democracy at war. It is the sacrifice of the people of the United States to the great cause of justice. I feel that I should avail myself of this opportunity to pay a small tribute to the patriotic exhibition of the people so manifestly exemplified in the success of the liberty loan.

Russia entered the war in August, 1914, at a period of economic prosperity which followed an epoch of financial and economic depression, caused by the Japanese War and the subsequent revolution of 1905. War and political troubles had shaken the welfare of the country by imposing heavy indebtedness and by disorganizing normal activities, but the resources of the country were so rich and their development so successful that in the seven years (1907-1914) Russia had fully recovered. Still more, it had reached an unprecedented state of welfare.

The Japanese War had cost Russia about three billion roubles. This new indebtedness had not only been fully "digested" by the country but it was possible to raise the state budget from about 2.4 billion roubles in 1908 to 3.4 in 1913 and it should be remembered that this immense increase was used greatly for cultural purposes and did not necessitate new loans. In fact for several years before the present war the budget had not only been balanced without deficit, but the Treasury was able to accumulate from the surplus an emergency reserve fund of about five hundred million roubles and in addition to diminish the indebtedness by paying off about two hundred million, thus lowering the total state debt from 9.05 billion roubles in 1910 to 8.85 billion roubles in 1913. A vast gold deposit accumulated in the Treasury. On January 1, 1914, there were one billion, seven hundred million roubles of gold in the vaults of the state bank, the total metal reserves including foreign liabilities surpassing two billion. The Russian gold reserve was thus the largest in Europe, the British being in 1915 about eight hundred million and the French one and one-half billion roubles.

However prosperous were the general conditions of the country it is clear that all the normal sources of revenue were inadequate to meet the requirements imposed on the Treasury by warfare,—and this, although the war in the first year did not actually require excessive disbursements. It is most interesting to follow the increase of the cost of the war in Russia. During 1914 the expenses were only about twelve million roubles a day. They reached about

twenty millions in 1915, increasing from thirty-five to fifty million in 1916. At present Russia is spending about fifty-five to sixty million roubles a day.

The low expenses of the first year of the war are to be explained by the fact that during this period the army was using war material previously accumulated, and forming the regular complement provisioned in the mobilization plans. On the other hand, due to the richness of Russia in victuals, there had been at that time no substantial rise in prices. Deficiency in food supply was felt only late in the second year of the war. It was one of the greatest mistakes of the old government not to have introduced food regulation at the very beginning of the military operations. How fortunate for this country to have adopted a policy of sane regulation at the very beginning of warfare. The expenses of war increased in measure later as new extensive orders had to be placed to cover deficiencies in ammunition and as there had to be met the increased cost of food, raw material and labor.

To cover the expenditures of war extraordinary financial measures have to be adopted. Of such there are three: (1) increased taxation; (2) loans; and (3) emission of bank notes. All of these three methods were used in Russia from the very beginning of the war.

**Taxation.** It should be remembered that at the very beginning of military operations regulations for complete prohibition were issued and the sale of alcohol and vodka suspended. This fact had the most beneficial result for the general welfare of the country and was of the greatest political and social consequence. But at the same time it caused a decided "gap" in the budget causing a loss of about one billion roubles.

Characteristic of the situation in Russia all throughout the war had been the fact that all increases in taxation had been only about sufficient to cover the expenditures of the civic budget. At the start it was necessary to cover the deficit due to the suspension of the sale of vodka. Later, one had to keep pace with the increasing expenditures, and this notwithstanding the fact that the progress of taxation had been very substantial. All taxes were practically raised: direct, indirect, excises and duties as well as the revenues from state monopolies. In some cases taxes were nearly doubled. Railway fares and postage were increased 25 per cent. New taxes

✓ were imposed—an income tax, a tax on war super-profits, etc. Comparing the budgets of 1914 and 1917 we find that 566 million roubles were obtained by direct taxation in 1917 as compared with 206 million in 1914, the total levy of taxation amounting to 2.1 billion in 1917, as compared with 1.24 billion in 1914. In order to appreciate this additional tax burden one should take into account the loss of territory and the extensive reduction in the number of taxpayers, due to casualties amounting to many millions of men during the bloody first period of the war. Further taxes have been imposed since the revolution, principally in the line of direct taxation, and the civic budget increased to about 5.4 billion roubles, which, taking into account the elimination of the vodka revenue, means an increase of more than 100 per cent on the budget of the pre-war period. I wish to mention at this time that the country met this increase in taxation with a readiness to sacrifice and contribute. The war was exceptionally popular and notwithstanding the hate which all people had for the old régime and its government, the growth of taxation was met without murmur and with calmness.

The revenue of 5.4 billion roubles is to be confronted with a provision of 4.8 billion, representing the expenses of the civic budget. ✓ Thus about six hundred million roubles are left for war expenditures. But this amount, however great from the point of view of a civic budget, is insignificant when compared with the annual requirements of warfare, which amounts at present to more than twenty billion a year. Other measures, therefore, to meet the necessities of warfare had to be applied.

✓ *Loans.* Already during the first months of the war, an internal loan was issued for an amount of 500 million roubles. It is an interesting recollection to state the difficulties which the government had to face at that time when raising a loan, although of such a small total. It has been an experience of this war, so far as I know characteristic of all of the countries, that with the progress of the war the raising of loans was getting more and more easy and one can surely state that more difficulty was encountered in raising the first 500 million roubles in 1914 than in the issuance of bonds of greater totals in the later periods. In 1915, three loans amounting to two and one-half billion, and in 1916, two loans with a total of five billion were issued. After the revolution a new liberty loan was

launched which amounted to about four billion roubles. The total amount of loans exceeded eleven billion and in addition, short term certificates were issued of which four to five billion roubles were purchased by the people.

Internal loans were followed by foreign loans, especially since 1915, when extensive orders were placed in foreign countries. The war suspended Russian exports and deprived the country of an active trade balance which had been sustained for many years. From several hundred millions of active balance (surplus), the country in 1915 was brought to a passive balance (deficit) of more than seven hundred millions, and in 1916 to one and one-half billion. It was absolutely impossible to cover such extensive foreign purchases by loans issued freely on the market. Financing on such a scale could be operated only through government channels.

This fact of inter-allied government coöperation in financing is another characteristic feature of the war. In 1915 certain agreements were made for mutual use of financial facilities by Great Britain, France and Russia. These arrangements later resulted in formal agreements between the allied governments which provided Russia with certain monthly allowances in foreign exchange to cover expenditures of foreign purchases, conditioned, however, by certain modalities to the effect that purchasing of foreign goods would be centralized to avoid competition and that certain regulations should be provided for, so as to attain an efficient and practical form of commercial transaction. The total amount of foreign war loans until April, 1915 was about five billion roubles. Out of that only 320 millions, or about 6½ per cent, had been obtained through loans issued on a free market; of this amount one-half was loaned by the United States.

Summarizing, one sees that about sixteen billion roubles were procured during the war through long term internal and foreign loans and about four million from short term certificates. This amounted to about 60 or 70 per cent of the actual expenditures of the war.

It proved impossible to draw out more funds from the people and to return to the Treasury a higher percentage of the moneys expended within the country. This, to a great extent, was due to the fact that a considerable amount of money spent has been distributed within the peasant class, the small cultivator who is unac-

customed to investments and often prefers to hold his money in specie. The increase of the wealth and the rate of money holding within the country is most interesting. At least 80 per cent of the war expenditures have been made within the country; as a result the people during the war have become tremendously rich as compared with the pre-war period. The total deposits in all the credit institutions of Russia have increased from 5.3 billion roubles in July, 1914, to 12.5 billion in January, 1917; and to illustrate in particular the increase of wealth among the peasants, one should recall that the deposits in the savings banks have more than doubled. Yet, as I have said, it was impossible to raise all the money necessary by credit operations, and the government was compelled to issue bank notes. This measure, however undesirable, is in most cases necessary in the process of warfare. All countries have to use this resource. Great Britain, probably, has used it least of all, France stands in between and Russia has used emission to the greatest measure.

*Issue of Bank Notes.* Before the war the Russian currency was excessively stable. As I have told you, the gold deposits of the state bank, the only emission institution in Russia, were about 1.7 billion roubles. The emission laws permitted an issuance of paper money to an extent of only three hundred million roubles above the gold deposit. In fact, under existing requirements of circulation, the emission law had never been fully used; the amount of bank notes being a little above 1.8 billion roubles, thus being guaranteed by the gold reserve to about 90 per cent of their par value.

Since the beginning of the war the emission law had to be changed and further issuance of bank notes was permitted. These issues were made by the state bank against short term certificates of the Treasury, the state bank formally purchasing the bonds of the Treasury. In reality, this operation represents an emission with a reduced gold reserve and of course resulted in an inflation with paper money and in a depreciation of the value of the rouble. The total amount of paper roubles issued until the beginning of this year exceeded eight billion, thus lowering the gold guarantee to a great extent. The inflation of the country with paper money created a great depreciation of the purchasing power of the monetary unit, such depreciation being greatly increased by the fact of an acute shortage of commodities.

(1) This lack of commodities is perhaps the outstanding feature of the present economic crisis in Russia. The suspension of imports and the militarization of industry, turning all the productive capacity toward munition work and thus reducing the production of commodities, had deprived the market of every-day necessities. Boots, clothing, household articles, metals and all kinds of elementary and necessary articles were becoming scarcer and scarcer, and this resulted not only in an outrageous increase of prices, but offered as well the basis for social ferment.

When Kerensky spoke recently of the sacrifices which Russia is now enduring, he certainly had in view all the difficulties of life encountered at present due to lack of food, every-day commodities, transportation, etc., which in the long run result in deprivation and suffering. The inflation of the currency with paper money brought as a natural result an instability of the exchange rate of the rouble on the foreign markets. I would like to mention at this time, that the prevailing exchange rates on foreign markets throughout the war in no way correspond to the actual state of the economic and financial welfare of the country, but have been conditioned (especially lately) by political factors, or have been the result of the inappropriate financial policy of the old government.

In fact the exchange rate did not affect the actual purchase of foreign supplies, these being executed by the government using credits granted under inter-allied agreements. The exchange rate affected mostly private purchases, so far as these were not regulated and covered by moneys obtained through governmental loans. Unfortunately, one must admit that during the war the old government had not taken a strong policy of prohibiting unregulated imports, and thus encouraged all kinds of private financial arrangements between concerns in Russia and credit institutions abroad, particularly in America. These transactions in foreign exchange had the most depressing effect on the value of the rouble. It should be remembered that the lack of commodities allowed the importer to sell at exorbitant prices which would protect him against any possible loss in providing foreign exchange. Such were the reasons why transactions were accepted under preposterous conditions. The provisional government of the Russian Republic has fortunately suspended this policy and has adopted a strict and centralized regulation of imports, thus practically excluding the possibility of any



private exchange dealing, which under the present conditions would lose its attractiveness.

I have presented thus far a short outline of finance in Russia. The result seemingly does not appear cheerful. Due to the inflation of the currency with paper money, Russia is undergoing an acute financial crisis which is completed by disorganization in transportation, and a crisis in the production of commodities. While the total indebtedness of the country had reached about forty billion roubles in 1917, the debt will undoubtedly increase by next year to about sixty billions. With a shaken financial system, and a depreciated value of the rouble, such liabilities seem rather depressing and the conditions under which the present government has to carry the responsibilities of statemanship and conduct the great country in the path of its historical destiny seem rather discouraging. Nevertheless, I am not afraid to expose the situation openly and frankly, and this not only because I have faith in a policy of straightforwardness, but also because I face the situation with perfect calmness having the greatest confidence and hope. The financial difficulties, which Russia will have to meet, are similar to those which will have to be faced by all other countries, both allies and enemies.

*Post War Finance*

The essential feature of the problem of the financial consequences of the war lies in the necessity of meeting a war expenditure incomparable to any normal civic budget. It is this financial burden, which is comparatively equal for all the great powers, which will determine the future financial policies of all countries. When compared to this main task it will be a factor of second importance, whether at the start a country faced a favorable situation caused by a sane and systematic policy of credit operations, or will have to contend with a shaken financial system due to inflation. However different may be the initial conditions, for a country as a whole, as a certain economic unit, the main problem will be to absorb and to heal, in the process of economic development, the incurred bruises of the expenses of war.

All possible methods of liquidating the consequences of warfare do result in raising the state revenue. Increased state revenue involves eventually an increase in the amount of taxation and this means that a greater part of the income of the nation, of the output of the national production, has to be turned to the state for disposal.



As it is impossible to extend the pressure of taxes above a certain reasonable amount as compared with the national income, the only way to solve the question is to amplify the national production as such. It is therefore in the development of national production, in the expansion of economic activities, in the growth of the national output, that there lies, in the long run, the solution of the financial problems imposed by the consequences of war.

When determining, therefore, how a country will be able to meet the future situation, consideration should be given, first of all, to the possibilities of economic development and to the prospects of an increase of national wealth. This is a process, and a process of considerable duration. It should be considered as such and any occasional occurrence or situation should not be overestimated. In the long run, in the process of liquidation, the conditions in any country can change, political, economic and social; it is the potential possibilities of a country which should be taken into account and from this point of view a country, feebly developed, has even a certain preference over a country "economically saturated," that is, a country in which the existing relations between natural resources, labor and general conditions of economic activities have reached a conjuncture of intensity to exceed which is not permitted by the general balance of world competition.

It is from this aspect that one should value the present financial situation in Russia. The latent riches in Russia are well known. A country of practically unlimited territory, bountiful in natural resources, with an abundance of labor provided by an industrial and clever population, the efficiency of which has been hampered only by a lack of education, a country of excessively low economic "saturation," it is ready for the most spontaneous and intensive development. I would compare Russia to a youthful organism, promptly healing the heaviest wounds of economic and political disorganization.

One should recall the experience of the short period between the two wars (1907-1914), when progress was brought into Russian life by the establishment of the Duma, the first national representative institution in Russia. Of course, there can be no comparison between the financial problems of 1907 and those of 1917, but one should remember that in 1907 Russia was the only European country which had to deal with the financial consequences of a war, and

I recall how unsurmountable seemed to be to the people of Russia the financial problems which the country had to meet.

To illustrate what has been performed during the last decade, I will take two or three examples: the annual production of pig iron from 1904 until 1914 increased in Russia from 180 to 283 million poods, thus giving an increase of 60 per cent. The production of coal had nearly doubled. As to cotton, only sixteen million poods were used in Russia in 1905, of which ten were imported and six produced within the country. In 1916 the country consumed twenty-eight million poods, of which only seven million were imported. The joint stock of the banks had reached 632 millions in 1916 as compared with 237 in 1910. But nothing can serve better to evaluate the economic development of a country and to show its recuperative abilities than the rate of increase of the state budget. I will compare for example the growth of the state budgets of France and of Russia for the last fifteen years. If we take 1897 and 1912, that is a period of fifteen years, we see that the state budget of France has grown from approximately 3.4 billion francs to 4.5 billion, that is about 30 per cent. During the same period the Russian budget increased from 1.4 billion to 3.0 billion roubles. That is an increase of 210 per cent.

Therein lie the healing capacities of my motherland. You Americans have gone through a period of economic and political depression, when your country seemed on the verge of ruin but afterward entered upon the greatest period of economic development ever witnessed in the history of the world. I mean the Civil War, with all its bank notes, the depreciation of the currency, the disorganization of regular economic activities, and the ensuing period of unsurpassed development which brought this great country to its present state of unlimited wealth and unbounded economic capacity.

Russia, freed of the tentacles of despotism, free from restrictive and prohibitive legislation; Russia, literate and illuminated, with complete opportunity given to individual enterprise, will be easily healed of all the wounds and sores of the present political upheaval and economic crisis and will settle in the firm forms of a democratic commonwealth with an unprecedented development of her economic resources. The experience of history, the knowledge of the character of the country and of the spirit of the people give me confidence and faith in the future.

## THE FINANCIAL EFFORT OF FRANCE DURING THE WAR

BY J. FREDERIC BLOCH,

Inspector of the French Ministry of Finance, Financial Representative of the French Government in New York.

The financial effort of France during the war is, indeed, a mighty one. In order to properly understand it, it will be sufficient to observe the constant increase of the credits approved by Parliament since August 4, 1914.

The expenses authorized have reached:

1. For the last 5 months of 1914.....	\$1,260,000,000
2. For 1915.....	4,400,000,000
3. For 1916.....	6,200,000,000
4. For 1917 (estimated approximately).....	8,080,000,000
Total.....	<hr/> \$19,940,000,000

This is without counting the advances made by France to some of her allies aggregating over \$1,100,000,000.

France has, until now, met these enormous charges almost exclusively from her own resources, for until the entrance of the United States into the war, she had borrowed in foreign countries only about \$1,100,000,000 of which \$400,000,000 was in the United States, this last amount being approximately compensated by the loans granted by France to her allies.

These figures have increased since America's entrance into the war, especially owing to the financial assistance which they have so liberally extended to us. We fully appreciate it. In a recent speech the French Minister of Finance insisted on the invaluable military and financial support which the United States had brought to our soldiers. And I know he was speaking on behalf of the whole French nation when he addressed to your illustrious President and to the whole American people, the tribute of our admiration.

The patriotism of the people and their well-known thrift has made it possible for France to place two great loans which have yielded 22,000,000,000 francs, and to find in a regular and con-

tinuous manner the funds necessary for the operations of its Treasury, by a daily issuance of bonds of the national defense. These bonds can be bought in every office in France authorized to receive government funds, particularly post-offices where they are sold over the counter. The bonds are sold in denominations as small as 100 francs (\$20.00) in maturities of one year, six months, and three months. They are widely distributed, every one buying some thus making use of all available funds. It is estimated that the issuance of these bonds has given the French Treasury a constant source of revenue which has not been less than an average of 1,000,000,000 francs per month, and continues to be obtained without any shocks to the financial market and without having at any time brought about a crisis or a tightening of the money situation.

This monetary situation rests on the strength of the credit of the Bank of France. Organized in the beginning of the nineteenth century, this powerful central institution has, from its origin, maintained at all times the stability of our fiduciary circulations and of our credit. At the beginning of the war, the general mobilization had brought with it, for a time, complete suspension of the economic life of the country. The moratorium of commercial paper was declared. At that time the Bank of France found itself charged with 4,476,000,000 francs (\$850,000,000) of paper thus suspended. At the end of 1916 that amount was reduced to 1,340,000,000 francs (\$250,000,000), the commercial and financial activity having been practically resumed on a normal basis and this enormous debt liquidated.

We find also in the study of the monetary circulation in France a strong proof of the patriotism of the French people. At the beginning of the war an appeal was made to the population asking them to deposit with the Bank of France, to aid the national defense, the gold in their possession; in less than one year the French people brought 1,300,000,000 francs of gold and since then this flow of gold has not ceased to increase. It exceeds at present 2,000,000,000 of francs, and after three years of war, although the bank has had to export large quantities of gold for the purpose of covering purchases made in foreign countries, its gold reserve is more than 5,300,000,000 francs (\$1,020,000,000), showing an increase over normal times of peace.

But the floating of big loans, the issuance of treasury bills, and a certain increase in the fiduciary circulation are but temporary means of meeting exceptional conditions. It is necessary ultimately to resort to taxation as the final means of obtaining the revenue required to cover the increased expenditures. France has made large appeals to taxation. However, conditions created by the state of war, the mobilization of the larger part of its male population and the invasion of the national territory have forced the government to use fiscal sources of revenue with a certain amount of care.

It must not be forgotten, in order to fully appreciate the financial effort of France, that she has called under the colors approximately 7,000,000 men representing the best part of its active and productive population, and that one month after the declaration of war the Germans were at the door of Paris. The victory of the Marne repelled the invader and made it possible to reconquer a part of the ground temporarily lost. But, even now several of the departments of the north, the richest, most populated and the strongest industrially are in the hands of the Germans, and in the reconquered zone, due to the wholesale destruction committed by the enemy and due also to military necessity, a large part of the land has been found unfit for agriculture or industry and it has been necessary to remove a part of the population. It is estimated, without any exaggeration, that the number of citizens whose activity is lost for the time being for France for all these reasons is at least 4,000,000.

Notwithstanding so many unfavorable circumstances and thanks to the energy of the measures adopted by the government and the spirit of sacrifice shown by the entire country, the amount of fiscal revenue of the state, which had very naturally diminished during the first months of war, has been maintained in 1915 at the sum of about \$745,000,000; in 1916 it already reached the sum of \$900,000,000 and it is estimated that it will not be under \$1,045,000,000 for 1917.<sup>1</sup>

<sup>1</sup>Taxes and revenue other than direct taxes to June 30,

1917—\$450,000,000, or for the year, about.....	\$900,500,000
New direct taxes.....	96,500,000
War profit taxes.....	48,500,000
<b>Total.....</b>	<b>\$1,045,500,000</b>

So today, while the energy of the country is bent towards national defense, and a part of the land—the principal source of wealth to our country—is not cultivated for lack of labor, the taxes collected in France represent (after deduction made of the men mobilized and the population of the invaded regions) a charge of about \$36 per inhabitant. In 1916 the impost and revenues of the federal government of the United States represented a charge of only about \$9 per inhabitant.

In order to maintain in time of war at such a high figure the amount levied by taxation, the government did not hesitate to increase certain taxes and to create new ones which have been accepted by the public without complaint.

#### WAR TAXES IN FRANCE

1. The general tax on incomes, which had been under discussion in Parliament for years and always adjourned, has been put into effect for the first time during the year 1916, and the rate has been increased rapidly to 10 per cent with the exception of certain reductions at the base; the country has accepted without protest this measure, the necessity of which has been made plain by the war.

Other new taxes created are:

2. The tax on war profits has been fixed at 50 per cent of the excess of profits realized since the war; the rate of taxation has been increased since September 30, 1916 to 60 per cent of the taxable profits over 500,000 francs (\$96,000). It is proposed for the present to increase the taxes on this last class of profits to 80 per cent.

3. Exceptional war impost for every man not mobilized including a fixed tax of twelve francs and a surtax of 25 per cent added to the income tax.

4. International revenue taxes have been adopted in addition to the custom duty on certain objects which were previously subject only to import taxes, for example on coffee about \$7.50 per 100 kilos, cocoa about \$4.50, chocolate about \$4.50, tea about \$7.50, colonial and exotic products, pepper, cinnamon, vanilla, mineral waters, special drugs, etc. The theaters or moving pictures have been subjected to special taxes representing as much as ten cents a seat and as much as 25 per cent of entrance charges.



5. An entire class of contributions has been doubled, taxes on mines, carriages, horses, automobiles, billiards, clubs and hunts.

Articles of public consumption have not been spared and even those the production of which interests particularly a large part of the agricultural classes of France, as wine and cider, have been subjected to heavy surtaxes. For instance taxes on wine have been increased to fifty-five cents, on cider thirty-seven cents per hectolitre (about twenty-two gallons). The taxes on sugar have been raised from \$6 to \$7.50, on tobacco from \$2 to \$3 per kilo. Taxes on alcohol have been raised from \$40 to \$75 per hectolitre.

6. The postal rate for the interior of France has been raised from two to three cents. The postal, telegraph and telephone tariffs have been materially increased.

7. The special tax on the revenue of securities has been increased from 4 to 5 per cent and on foreign government bonds and various foreign securities from 5 to 6 per cent.

Notwithstanding all these increased charges, the government feels that the country is ready to accept further sacrifices and in the budget for 1918 the Minister of Finance contemplated the adoption of new taxes, particularly on transportation, inheritances and commercial transactions which will probably represent an additional revenue of \$230,000,000.

It is necessary to note before concluding that the fiscal system of France is very complex, and that it is very difficult at first sight to find what percentage of their revenue the French people pay to the state. The rate is certainly very high. For instance, the holders of bonds pay a large special tax (stamp, transfer, 5 per cent impost) which amounts, for the securities most widely held by the public (railroad bonds, real estate bonds, etc.), to about 15 per cent of the income, and if you add to this amount the new general income tax, you reach a total of 25 per cent. To this amount it is necessary to add indirect taxes, customs and state monopoly which enter for 78 per cent of the total of government receipts. Lastly, local taxes (department and counties) are also very heavy and in certain regions exceed the amount of direct taxes collected by the state.

It is not to be wondered that our population, many of whom have been so cruelly affected by the war, have been able to withstand under present circumstances such heavy fiscal charges, for it must not be forgotten that the wealth saved and accumulated for



so many years by the agricultural classes and the tireless spirit of thrift of the people are strong guarantees of the financial resistance of France. Also, the industrial development which, even in the midst of the war, is covering with factories regions, until now, bare of industry, gives us every confidence in the economic development of our country and in its ability to increase its financial contribution, which will have to be done in the near future.

For the task is not yet completed. The enormous war machine that has been set into motion for the most just and righteous cause, for the defense of what is dearer to us than our riches and our lives—our honor and our freedom—this machine must not stop, it will not stop until our aims are obtained, until victory and peace are ours. It will need more efforts and more sacrifices, in men and in money. We are ready to make them.

✓ Recently, the French Minister of Finance announced that a third war loan of ten billion francs would be issued soon, and that new taxation would be necessary to meet accrued charges. We do not know yet what the exact conditions of the loan will be, we do not know exactly what are the new taxes that we will have to pay. But we know that the loan will be oversubscribed, that the taxes will be willingly and gladly paid.

I am saying this because it must be known that the whole French nation is ready to do its duty, economically and financially, while its sons are fighting on the battlefields. I am not saying it to teach the American people an example or a lesson. America needs no examples, no lessons. You have already given the proof that your patriotism and your generosity know no limit and that no difficulty could deter you in the course that you have freely determined to pursue—the great success of the liberty loan has won the admiration of all. It is the result of the most powerful and efficient financial organization, built in a few weeks by the genius of American financiers, bankers, merchants, and backed by the patriotism of the whole American nation. And even this is but a beginning and the rest will follow. We all know that our countries will continue, on the financial as well as on the military field, to fight shoulder by shoulder and to work hand in hand to obtain and to preserve for the whole world justice and liberty.

ALAN

## THINKING IN TERMS OF MONEY THE CAUSE OF MANY FINANCIAL FALLACIES

BY BASIL P. BLACKETT, C.B.,

Of the British Treasury.

I took a solitary walk last Sunday in Rock Creek Park, and as I walked I began to ponder on what I had to say in this paper. The sun was warm and after a while I sat down by the bubbling stream on a rustic bench, when suddenly I saw approaching me one of the famous bankers who have taken service at the Treasury during the war. The fact that he was on foot has made me wonder since whether it was a dream. Fortunately I refrained from hailing him, for just then there appeared from the opposite direction a figure which I knew somehow to be King Solomon. He was not gorgeously arrayed and was evidently war-saving, but there was no mistaking the regal presence and the intellectual brow. My friend the banker—for some queer reason my memory fails now to identify him with any particular one of the several eminent bankers at the Treasury, so that in a way he seems to be an embodiment of them all—recognized King Solomon at once and called joyfully to him:

"My dear King: This is indeed a pleasure, you're just the man I wanted to see. The perplexities of war finance and the problems which confront the United States Treasury are gigantic. We're asked to find \$20,000,000,000 or more in a year, and we must borrow some \$12,000,000,000 to \$15,000,000,000 in the next eight or nine months. I simply don't know how the money is to be raised. You were dead right, King, when you said that money is the root of all evil."

"Good friend," replied King Solomon, "you know more of banking than of Scripture, or you would know I never said that. I may indeed have said that matrimony is the root of all evil. It was in my own case, and I fancy that my mother's first husband, the Hittite, must have felt the same. But let me suggest to you a new version of the proverb you misquote. It is this: 'Thinking in terms of money is the root of most of your evils.' I think you agree."

"Solomon is always right," replied the banker with a bow. "Undoubtedly our problem is not merely, or even mainly to raise the money. What we want for carrying on our part in this great war for democracy against Tyranny. . . ."

"Pray do not consider my feelings," Solomon interrupted, "I'm a strong supporter of democratic principles now. They might not have worked in Jerusalem when I was there, but one of my reasons for meeting you today was that I hope that this war may be the means of bringing the blessings of liberty and justice to my poor old Jerusalem."

"No offense meant," said the banker. "What I was saying was that when we say we are asked to spend \$20,000,000,000 in the first year of the war, we really mean that we have to secure for the use of the United States government for war purposes, labor, materials, food, commodities and services such as those rendered by soldiers and sailors and by non-combatants too, in all sorts of ways; we have to secure goods and services (to use a convenient short phrase) which, valued in terms of dollars, represent \$20,000,000,000. The real problem is not so much to find the money as to find a surplus of goods and services to that amount available for the purposes of the government, over and above the goods and services which the 100,000,000 people of the United States are employing for their own private purposes. That's what you mean by your phrase about thinking in terms of money, isn't it?"

"You take my meaning exactly. And what I suggest to you as the only possible solution of your financial problems is that you should make the people of the country understand the state of the case. None of them understands what twenty billions of dollars means. You yourself probably don't go much beyond visualizing it as the figure twenty with the dollar sign before and followed by a comma and nine ciphers neatly divided by commas into sets of three. Meanwhile there's one of your friends in Wall Street who owns common stock in half a dozen sound American concerns, valued six months ago at market prices at say \$1,000,000 and now valued at \$700,000, who thinks he is ruined, and says the government has ruined him, and never stops to reflect that the stock in question represents a share in certain real things such as buildings, machinery and raw materials, which are probably not less valuable, and possibly more valuable (in terms of money at any rate) than they

were six months ago. And what's worse, some of your banker friends who ought to know better seem to think in the same slipshod way. Others cry that the great thing to do is to keep money circulating because it is good for trade—"business as usual." Other people cry out for conscription of wealth as a solution of all troubles, as if a house in Fifth Avenue or a bank in Chicago could be put on wheels and sent to France for use as a tank; or the Pennsylvania Railway Company's tracks could be torn up bodily and transported to Russia without anyone but the supposed millionaires who own them being any the worse."

"If you believe in democracy you are at any rate not a Socialist, I am glad to see," said the banker.

"Don't you be too sure, my friend," rejoined the King. "It depends on definition. But to continue, the thing to do is to get the people of this country to understand that money is merely a symbol, recognized by civilized people for their own convenience, as giving the owner of it for the time being a call on other people, the power of getting other people to work for him, the power to command goods and services which other people are able and willing to supply in order that by receiving a reward in money they may themselves have command of what they need for their daily sustenance and to keep a roof over their heads; or over what they desire to obtain for the sake of comfort and luxury. It is quite easy—as some of your friends the Socialists will gladly explain—to construct a theoretical state of society in which money would be abolished."

"No doubt it is," broke in the banker, "but would it work?"

"I did not express any opinion," was the reply. "But does not the fact that it is theoretically possible to dispense with money prove that money is merely a mechanical device and nothing more, devised to keep a machine of a particular construction in easy working order?"

At this point King Solomon took a watch from his pocket and remarked that he could still spare a little time longer before starting off to advise the King of the Arabians on military matters. He suggested that they could continue their talk more comfortably seated, and I was a little alarmed when they made for my bench, which was not meant for more than two. Needlessly, as it proved; for in spite of King Solomon's ample proportions the small seat accommodated them both without my being so much as observed.

"King," resumed the banker, "that's a fine watch of yours, but I notice you wear only a common cord as a chain."

"The watch is an heirloom," Solomon answered. "It belonged to the Queen of Sheba's grandfather, and I could not get a tithe of its value if I sold it. But my heavy gold chain went more than a year ago to swell the gold at the Bank of France, and I gave the proceeds to relieve the Armenian sufferers."

The banker looked as if he would like to pay a tribute to this generosity, but stopped short; no doubt from a sense of reverence. Instead, he resumed the discussion with the words: "You do not, of course, suggest that we could or should supersede money in arranging the finance of the war?"

"Certainly not," was the reply. "But keep money and finance in their proper place as useful bits of machinery, and meanwhile go out to the people and explain the facts."

"That is a big undertaking," said Mr. Banker. "Do you think it is really worth while?"

"Surely, surely," said Solomon. "If you want to accomplish what you have set out to do that is the only possible method in this country. In Germany there has been no need to explain. The people have been dragooned into saving, if only by the British blockade which has forced the whole population to organize itself on a war basis. There, everyone has to serve in such a way as the Junkers think most likely to help them in conducting the war, producing all he or she can, and consuming only what is absolutely essential to keep body and soul together, and sometimes less. In France and Italy, and to some extent in Great Britain, similar necessity has been at work, and this has been reinforced on one side by continual lessons and appeals for patriotic self-denial, and on the other by drastic legislation prohibiting the import and manufacture of anything that could be done without. Nearly everyone in these countries has realized this truth. Do you not remember the Song of the Pennies, which the children sing in England?

With five pounds the cost of a rifle  
Why, what can a poor penny do?

And then the chorus, in which Sergeant Shilling joins:

We are each small enough, it is true;  
There's little a penny can do;  
But a cartridge to fire from a rifle  
Is just what a penny can do!

All over the world the children learn this truth at once. Last Christmas Mr. Lloyd George received a letter from Arizona which said: "Please sir, Peggy is eight and baby is five, and I am ten, and we should like these five dollars to be used to give some of the poor suffering people in England a happy Christmas." There was a further note from their mother: "This is entirely their own idea. Their uncle gave them a dollar each to buy themselves Christmas presents, and they have saved the other two." And next to the children the working girls have been the quickest to learn. The mill worker of Milan, the midinette of Paris, the munition worker in London have been among the first to see how they can help. Each of them has worked harder and earned money, not to spend on herself, but to lend to her country, so that the government may have the wherewithal to buy cartridges and hand-grenades to protect the lives of their boys at the front. Many of them have understood well enough that the money they lent to the nation came back to them as wages to pay for the cartridges they were making, and that by not spending it on themselves they were setting labor and materials free to be used to help on the war. Do you remember the poster advertising the British War Savings Certificates? "One hundred and twenty-four cartridges for 15s. 6d, and your money back with compound interest!"

"Yes," said the banker, "I've seen specimens of that poster, and it certainly concentrates the appeal for savings into a very compact and alluring sentence. We're thinking of issuing something on the lines of those British War Savings Certificates here."

"An admirable plan" was Solomon's comment. "I congratulate you. These hectic liberty loan campaigns, whirlwind weeks during which every art is employed to make everyone eat and drink and work and play and dream to the tune of 'Buy a Bond' are wonderful events, and by the way I must congratulate the Treasury through you on its remarkable achievements this last month. But these campaigns have their disadvantages."

"That's so," said my friend the banker, with conviction. "They use one up terribly and they upset the market a good deal."

"I was not thinking so much of that," answered King Solomon. "You mention some of the objections, but the main disadvantages, to my mind, are that they encourage people to think in terms of money, and as soon as the campaign is over people settle

down to their old habits of extravagance. What I like about the War Savings Certificate is that the campaign goes on continuously and involves something deeper than a passing emotion. People get the habit of daily saving and the incentive to go on saving, because there is always a form of war loan which they can buy, and there is no temptation to borrow money to subscribe, and then forgetfulness to save to pay off what was borrowed. But my time is nearly up. Let me tell you a story before I go. You remember the victory loan campaign in Great Britain last January and February, when \$5,000,000,000 of new money was raised (after two and one-half years of war) quite apart from the fact that some \$1,500,000,000 to \$2,000,000,000 of three- to five-year bonds were converted into long-term loans. (I must begin by apologizing for the misuse of language in this story. It arises from a habit I have of accurately reproducing conversations.) One evening Robinson, a war loan worker, was sitting in his club after a hard day's work, when an acquaintance of his, Smith, came up and introduced a third man, Jones. Robinson knew Smith to be on the stock exchange and gathered that Jones was also a member. He knew nothing of their monetary position. The talk soon turned to the war loan and Smith remarked that he had not made up his mind yet what he would do. He had, he said, taken £10,000 of the four and one-half per cent war loan in July, 1915, and been badly stung—a slang term which implies that his investment had not been wholly satisfactory. So I judge from Robinson's rejoinder, that a man who had invested in that loan had no need to complain, as he could now convert it into the new loan on very satisfactory terms. 'Yes, I know,' said Smith, 'but I got so sick with the way the bally thing fell, and the idiotic government did nothing to help, that I sold it and bought some American rails, and now the robbers are commandeering these; and I've two sons at the front, too. There's no gratitude in these confounded politicians.' By this time Robinson was fairly roused and he proceeded in half an hour's patient exposition and exhortation to give a masterly display in securing a difficult subscriber. In the end Smith seemed deeply impressed. 'I never saw it in that light,' he concluded, 'and I'm hanged if I won't take £50,000. I'll have to borrow the lot at my bankers', and I've an overdraft already, but from what you say I think I can square them.'



"All this time Jones had said little, though he had seemed to be listening attentively. Flushed with his success with Smith, Robinson now turned to Jones. But he could get nothing more out of him than that he had considered all the means available to him and had reluctantly decided that he could not subscribe.

"Six months later in the same club Smith and Robinson met again. 'You made a fine fool of me that night,' said Smith. 'Just let me tell you what a mess you got me into. I've had the most ghastly day of my life today. I was offered a half share in a partnership to develop a new ruby mine 'somewhere in Asia.' It's the chance of a lifetime. Only £100,000 wanted. We can't float a company till after the war because this sickening government won't let anyone issue new capital unless it chooses in its wisdom to say the issue will help to win the war. Well, I said I was on, and I went over to my bankers to arrange things when the manager said he was sorry but he couldn't increase my overdraft, and had the cheek to suggest that I ought by now to have paid off some of what they lent me to take up your blessed loan. He wouldn't lend me money on any of my other securities without being told what I wanted it for, and when I told him he said that the bank could not advance money which was to go abroad, or for a purpose which was so obviously not necessary for winning the war. And then, not content with these insults, he proceeded to suggest that people with much smaller means than mine had succeeded in paying off very big sums borrowed for subscribing to the loan, and would I please consider the matter seriously. I was so angry that I told him to sell the bally war loan for what it would fetch and be done with it. He didn't like it, he said, but if I was really determined to forget that we were at war it was probably the best thing I could do.

"By this time I was so infuriated that I said I would close my account and find a bank where the managers were gentlemen, or at least taught to behave like gentlemen. I went straight across to my friend Brown—you know the bank. Well, I'm hanged if Brown didn't tell me that he thought my bank had been remarkably patient—that in any case he could not help me, as the London banks had agreed not to take customers from one another if the reason for the change of bankers was that a customer had failed to get accommodation for a purpose which was obviously not useful to

the war. So here I am absolutely dished. I've had to say I can't go half shares in this show, with the result that the whole thing's off. I've quarrelled badly with my bankers, and altogether I'm in a fix. Coal's a staggering price and I've just added two new palm houses to the glass I have to keep going. I've two sons in the army, and I might at least claim that amount of luxury. Incidentally I've only managed to keep my head gardener, who thinks he ought to enlist, by threatening to turn his wife out of his cottage if he does. He's forty-five and has two sons at the front and ought to be ashamed of himself; and with the wages I'm paying him he's a regular millionaire. Why he told me he'd got over sixty War Savings Certificates now. Well! you deserved this tirade, you know, as you're the scoundrel at the bottom of it all. I must be off now, as my son's coming up from Aldershot, and we're going to paint the town red to drown our troubles. So long.'

"Scarcely had Smith gone, when Robinson saw Jones approaching. He tried not to be seen as he thought that he couldn't bear to talk with another of his failures that day. But Jones made his way quickly to him. 'Hullo, Robinson,' he began. 'I suppose you're not particularly anxious to renew my acquaintance after the way I met your war loan appeal. The fact is you made me feel thoroughly mean that night but I couldn't help myself. I've something better to tell you today, and that's why I've ventured to speak to you. I'd have liked to do it before but I didn't have the courage. The fact is I used to have a pretty good business in the American department of the stock exchange, but that's gone altogether because of what the government—quite rightly, of course—had to do about American securities. Then just when I was hoping to get our house let so that we could move into a cheaper one, our two boys got killed on July 1, 1916, the first day of the Battle of the Somme. The shock was too much for Mrs. Jones and she had a complete nervous breakdown, and we had to have two nurses in the house and no end of expense for special treatment and specialists—though I must say my doctor has been a brick about his own account. The result was that last February I had got rid of practically all my capital except the 4½ per cent war loan I'd bought, and I had an overdraft of nearly £600 at the bank. I was earning something at the Ministry of Munitions where I had got a really useful job. But I had refused to take anything much by way of

salary when I had enough without and I didn't think it fair to make the country pay because of my new troubles. Thank goodness things are quite easy now. My wife's recovered. We've shut up all but two rooms in our house, and my wife's as happy as can be in saving for the sake of the other mother's sons. She's a great woman, though I say it that shouldn't. And you've no idea how jolly it is. The wife got places for two of the maids at the munitions factory near us and sometimes they drop in to tea with us on Saturdays and tell us about their work and talk of what they'll do when the war's over. Did I tell you that the wife's promised to have them back? And the kitchen maid's working as conductor with the omnibus company, and she and I have a chat sometimes when I happen to come down to work on her 'bus. Well, the result of it all is that I've paid off the bank overdraft and they've lent me enough to buy £500 of your war loan in the market, and that's partly paid off, and all of us, Mrs. Jones and our old servants and I, are members of a War Savings Association in our neighborhood and we're piling up War Savings Certificates. So I feel that I can look you in the face again. . . . Eh well, so long! It's good of you to say such nice things of our small efforts, but we're really trying to help, you know.'

"Robinson's effort to restrain Jones from flying from his praises proving vain, he sat for awhile and pondered on the two cases.

"But I need not tell you his conclusions.<sup>1</sup> I'm afraid my story's rather long already," said Solomon. "And now I fear I must hurry

<sup>1</sup>As neither King Solomon nor the banker explained the conclusions to be drawn from the two cases, I do so, though with diffidence. I suppose they would be something like the following:

Smith had at best merely put his own and his banker's credit at the disposal of the government on false pretences for a few months during which someone else (such as Jones) had been able to build up new savings with which to replace the gap left when Smith sold his loan. More probably he had compelled the government to find £50,000 in June to wipe out (by means of the special war loan depreciation fund) the fictitious credit based as it proved on no real goods and services, which Smith in a moment of shallow emotion had allowed the government to build upon.

On the other hand, Jones in six months had:

1. Saved £600 to repay his bank, thereby
2. Setting goods and services to that amount free for the government
3. Undertaken to save a further £500 and already saved part of it

off or I shall be late in Arabia. The connections are not good, I find, in these days though I'm glad to say that Beersheba Junction is open again. Goody-bye, my friend."

And with that he vanished, and the banker somehow disappeared too. But I noticed that a fly leaf had dropped from King Solomon's pocketbook, and when I picked it up I found it covered with all sorts of odd sentences in a minute handwriting, of which I quote a few:

"He that gathereth not scattereth abroad."

"Every dollar saved helps twice, first when it is saved and again when it is lent to the nation."

"Millions in the belligerent lands have for the first time an opportunity of laying by a little capital. It is the chance of generations. Will they not take it? They help their country and themselves by saving."

"If man would but learn the duty of right spending, he would learn the greatest pleasure in the world."

There were other sentences also which I did not decipher. But I particularly noticed that on each side of the fly leaf there was printed in red letters a sentence which evidently appeared in a similar place on each leaf of the note book from which it came, and the sentence was this:

"Where there is no Vision the People perisheth."

- 
4. Lent the £500 to the government for war purposes on the security of his intention to save, backed by the bank's credit, thereby
  5. Giving the government command over goods and services to the full extent to which the self-denial of the Jones family was setting goods and services free, and
  6. Had evidently been exercising an untold influence for good in aiding others to find fit places in a nation organized for war.

B. P. B.

## THE FINANCIAL PROBLEMS OF ITALY

BY F. QUATTRONE,

General Secretary, High Commissioner of Italy.

In America's social organization, which is based upon individual liberty and in which every economic enterprise has had capital as its basis, all energy, all means of production have always been concentrated in the most appropriate way, and the entire available capital has always been employed in the most intensive manner.

The country's very large production and the wide extent of its trade have produced enormous wealth. Thus, when the supreme moment of decision arrived, this wealth converged towards the realization of great democratic and humanitarian ideals, which are the basis of President Wilson's policy, and other currents of capital flowed towards the success of your liberty loans, in order that your government might be placed in a position to take a powerful part in the solution of the financial problems of its European allies.

To accomplish this great and strenuous task which America has undertaken, there are required men who can face a superhuman work of preparation to overcome the greatest difficulties. Men of strong fiber, intelligence and endurance, able to give impulsive force to the new course that the finance of the United States has been called upon to take. America has had these men and it is now with respect and emotion that I mention the names of William G. McAdoo and Oscar T. Crosby. Only through the activity of these two men and that of all of their coadjutors, has the United States been able, up to the present time, to grant to the Allies a loan of \$2,851,000,000, while the second liberty loan has also proved a great success.

What are the economic difficulties of the Allies? What are Italy's sufferings? What are we, ourselves, in this cataclysm which has turned the world into chaos? Let us have a broader vision of this war. What matters most is that civilization might be reconstructed, and that the world might be reorganized for the cause of liberty, justice and peace.

The Allies are concentrating all their efforts; Italy stands now in the first line ready to endure with incredible sacrifices of abnegation the most tremendous attack of the Austro-German forces. But notwithstanding these conditions, we feel sure that in the end, the unity of Europe will not be formed under the heel of the junker, and then America will realize the part played by her in the unity of all democratic Europe.

Let me say a few words about Italy. I shall confine myself to financial matters. The financial situation contains, often in itself, virtues, sacrifices and the destiny of a nation—and this is the true case with my country. At the outbreak of the war, in order to meet with the enormous requirements of her army and navy, Italy made appeal first of all to internal savings: four internal loans have been floated for the amount of four billions francs, and this the entire nation has answered unanimously. But loans are not sufficient to keep up the needs of a nation; they must be supplemented by a constant flow of other revenues. From this follows what we call "fiscal policy," or in other words "system of taxation."

In normal times, prior to the war, we had direct taxes on land and properties, income taxes, taxes on business transactions, on the manufacture of the most important and indispensable products (as sugar, oil, bicycles, motorcycles, automobiles, alcohol, beer, gas, electricity, etc.), customs house duties and maritime charges. We had a monopoly of tobacco, salt, postal facilities, telegraphs and telephones, and the government took over the management and control of the entire system of railways together with certain steamboat lines between the continent and the islands of Sardinia and Sicily. The collection of all these revenues wisely managed was sufficient to cover the enormous expenses sustained by the state.

How many other sacrifices have been undergone by capital, property and Italian labor on account of these high national aims?

I repeat that the financial situation of a people sometimes reveals great virtues: I can tell you that the payment of fiscal contributions in my country is a sentiment of duty as deep as religion.

When the war broke out the Italian government could not do otherwise than to take recourse again in its most secure sources of revenue. New sacrifices have been asked, much heavier demands have been made on the old revenues, increases in the prices of all monopolized articles have been applied, postal, telephone and tele-

graph rates also have been increased; railway facilities have been curtailed; while new government monopolies have been created, such as the manufacture of matches, playing cards, and recently the manufacture of shoes.

All of the existing taxes for the manufacture of the most indispensable and important articles have been raised again and war taxes have been imposed on theaters, moving pictures, automobiles, driving horses, carriages and servants. The whole amount so collected by the Italian government during the fiscal year 1916-1917 reached the figure of 3,207,226,394 lire against 1,854,023,147 lire collected during the fiscal year 1914-1915.

Notwithstanding these facts, our system of taxation had to attain a higher goal full of significance and results. It was necessary for my government to deal also with excess war profits and find in the industries created by the war a new source of revenue; in such way a limit has been put to the enrichment of those making big profits out of the war industries. A new tax has been imposed and consequently from 60 per cent to 80 per cent of the profits of the Italian manufacturers and merchants is passing from them into the Italian Treasury.

Later the extraordinary emergencies of the war have compelled us, as France and England, to avail ourselves of the loans of money granted by the United States.

My country, which has almost six million sons in the war, is the country of labor. Labor is the force which creates and augments national prosperity. Many of you who have travelled in Italy in times of peace were attracted by the beauty of the landscape, by the ruins of our ancient civilization, but perhaps did not have time or wish to examine the economic progress of Italy in the new century.

I do not wish to tire you with figures, but cannot refrain from mentioning some significant data showing our economic development. I shall not dwell upon metallurgic industries; which, for example, while in 1901 produced only 15,000 tons of pig iron and 123,000 tons of steel, in the year preceding the war had attained respectively 379,000 tons of pig iron and 800,000 tons of steel. I shall not emphasize the fertilizing industries, which from 900,000 tons produced in 1900 has attained a production of over one million tons in 1913.



Quite apart from the fact that in 1913 the mercantile marine also has doubled the tonnage of imports, and the export trade with the United States has been doubled in comparison with the year 1900, I wish only to remind you that Italy has a potentiality of four million horse power of hydrodynamic force, of which 24 per cent has been already utilized. I think that the following résumé, regarding the disposable amount of hydraulic power, in comparison with the percentage of utilization, can give you an idea of the progress attained already in my country and of what its industrial future will be:

## HYDRAULIC POWER.

	Disposable (1000 H. P.)	Utilized, per cent
Switzerland.....	2,000	25.5
United States.....	28,000	24.9
Italy.....	4,000	24.0
Canada.....	8,094	21.0
Norway.....	5,500	20.4
Sweden.....	4,500	15.6
France.....	5,587	11.6
Spain.....	5,000	8.8
England.....	963	8.3

In comparison with the territorial surface we have respectively the following which shows the amount of hydraulic power per square mile utilized:

	H. P. per square mile	
	Disposable	Utilized
Switzerland.....	125.20	32.00
Italy.....	43.80	10.70
Norway.....	44.30	9.02
Spain.....	26.00	4.08
Sweden.....	26.00	4.08
France.....	27.00	3.14
United States.....	9.30	2.31
Canada.....	8.74	1.83
England.....	10.90	.91

The immense reserves of our Alpine blue waterfalls and those of the Appenines are gradually being utilized and the so-called white-coal will solve the most serious problem of my country: a long system of electric wire will be extended throughout the Italian peninsula, like so many arteries carrying life through the human body.

I said that labor is the force that creates and increases the prosperity of a nation. You may see at close range what a precious contribution of industrious and intelligent labor has been given in this prosperous country by the Italian immigrant, and you can follow also the progress of this large colony of ours. While the Italian emigration to the United States during the year 1880 was only 11,000 persons, in 1901 it reached 125,000 and in 1913 about 407,000. We in Italy say that the biggest Italian city is New York, where about 700,000 Italians are living.

In the meantime the Italian population increased from thirty-two millions in 1901 to thirty-seven millions at the present time. This increase means, for a country, an increase of its active forces, of its political power, an enlargement of its social, intellectual and political problems.

The six million men will return after the war to the farms, to the industries, to the profitable work coming after peace, and there my country, notwithstanding the temporary reverses suffered, will grow stronger and with its immense work will certainly give proof of having well deserved the confidence placed in her by American capital in the time of need.

May your country, inspired and with the full knowledge of the sacrifice of blood, money and property endured by all the allied powers, realize the necessity of coöperating with your government for the triumph of a universal and real democracy, based on the principle of liberty and justice.

## BOOK DEPARTMENT

### BUSINESS MAN'S LIBRARY

#### BANKING, INVESTMENTS AND FINANCE

ANDERSON, B. M., JR. *The Value of Money*. Pp. xxviii, 610. Price, \$2.25.  
New York: The Macmillan Company, 1917.

Dr. Anderson has added a large book to the already voluminous literature relating to the value of money. His book is not only large, but also laborious, and much of it deals rather abstrusely with more or less familiar problems and conditions. These characteristics tend to make a subject, of itself difficult, unnecessarily repellent. There is a great deal of psychology, mathematics or mathematical notation, and historical "side light" in this volume. In addition there is a great deal of bibliography, and the student gets the impression that the machinery employed is more important than the conclusions. It is not inconsistent with the criticism just offered to say that the volume shows learning and wide reading, and that for those who are able to sift the material therein presented with some care, a perusal of the book may be of benefit. It might be an interesting book regardless of its conclusions, if the author had avoided the use of an academic dialect which obscures the meaning of many sentences to all except those who have accustomed themselves to the peculiar idiom which is used by some writers on value and money.

Beginning with a treatment of economic value in the abstract, the author then offers a discussion of the value of money as a special phase of value. This is continued in various applications through four chapters which, with the first, make up Part I. Part II is a discussion of the quantity theory of prices and money, and of credit as a factor affecting money values. Incidentally, the author has something to say of foreign and domestic trade, and the function of money and the precious metals therein. There is also some interesting discussion of stock exchange speculation. Part III discusses the value of money and the position of credit as factors in the modern economic organization, while Part IV, The Reconciliation of Statics and Dynamics, makes some special applications of economic theory to monetary and price questions. Probably the matter contained in Part III will be of largest interest to the practical or general reader, and it is likely that the impression produced by the book will be dependent largely upon the judgment to be formed by such readers concerning the validity of the views and conclusions there set forth.

In a broad way, the view of the author is hostile to the quantity theory of money, but he is apparently indisposed to accept any of the theories of money value now in existence. This would be no ground for complaint, if a new and more satisfactory theory were offered, but it is difficult indeed to ascertain the author's idea on the subject. How strangely the phases of the book which have to do with strictly practical questions have been distorted by his tendencies

toward abstract speculation, are seen in his "important practical conclusion" (page 578), that federal reserve banks ought to be allowed to rediscount stock exchange paper. It is difficult to follow Dr. Anderson through the peculiarly twisted reasoning which has led him to a conclusion directly at variance with the judgment of both theoretical and practical men regarding a great question of administration and management in banking. Further continuing the same line of thought, there is evolved the remarkable theory that no bank reserves are needed. This, indeed, could scarcely be believed, were it not expressly stated by the author in so many words (page 543), where he says: "As we approach static conditions, we need less and less gold reserve behind bank demand liabilities. The static law of bank reserves is that none are needed." This singular "law" should be placed side by side not only with the view that rediscount institutions should take up stock exchange paper, but also with other vagaries of thought which appear from time to time throughout the work.

It is no reflection upon Mr. Anderson or his work to say that the subject with which he deals is one of great breadth and difficulty, and that it has not yet been adequately presented.

H. PARKER WILLIS.

Washington, D. C.

ATWOOD, ALBERT W. *How to Get Ahead*. Pp. 277. Price, \$1.25. Indianapolis: The Bobbs-Merrill Company, 1917.

Mr. Atwood has admirably succeeded in his purpose: to write a book "for young men and women of moderate earning capacity which will help them save and invest money."

The subject is approached with a sound knowledge of the principles involved, and Mr. Atwood, in his capacity as Lecturer on Finance at New York University, has come personally in contact with the group to which he writes. Intensely practical, the book contains various helpful suggestions as to budgeting, long-term investments, etc. The names used to designate the different types of bonds, stocks, mortgages and insurance policies are carefully differentiated and explained.

"There is no great secret about earning money," says Mr. Atwood, "but it is a hard task to spend money judiciously after having earned it."

Perhaps because of the effort to be absolutely clear, the author gives way to somewhat needless repetition. It has neither literary merit nor new ideas; it simply states in clear, readable English the "hows" of saving and investment.

E. H.

BANCROFT, HUGH. *Inheritance Taxes for Investors*. (Second edition, revised.) Pp. 133. Price, \$1.00. Boston: Houghton, Mifflin Company, 1917.

The author summarizes inheritance tax legislation passed in the United States and Canada down to January 1, 1917. Numerous tables show the state and national tax rates and brief comment is made upon the equity of the various laws. Considerable attention is given to state taxation of securities issued by domestic

corporations but belonging to the estates of non-resident decedents. The publication serves as a convenient handbook both to investors and to students of public finance.

F. T. S.

COLLVER, CLINTON. *How to Analyze Industrial Securities*. Pp. 204. Price, \$2.00. New York: Moody's Investors Service, 1917.

Investment banking houses make a rough classification of businesses for the purposes of financing which divides private corporations into railroad, public service and industrial. All corporations which are not railroad or public service are classed as industrials. Even mining corporations fall into this classification. Obviously, however, the wide variety of businesses called industrial makes the formulation of principles for analysis of industrial securities a more difficult matter than for securities which are based on a single kind of business, as that of the railroads. Public service corporations form a compact group of business resting on the same base and with many more points of likeness than of difference above their entirely common base. Besides the similarity of the businesses, the supervising bodies and the managers by agreement have come much nearer a uniform and complete accounting and publicity of that accounting than the so-called industrials. Industrial securities are for the most part later comers into the general investment market than either of the other classes. All these reasons account for the fact that so little has been done in any attempt to systematize the study of industrial securities.

Mr. Collver's book is a pioneer work and on that account much is to be forgiven it in the way of sketchiness. The student of securities owes the writer much for what he has accomplished. The most useful parts of the book are the brief chapters under the general heading of Business Factors on Fluctuations in Demand, Diversification (of product), Integration—Sources of Supplies, Standardization and Location, and on Competition, and certain suggestions on the study of the balance-sheet and income account.

HASTINGS LYON.

*New York City.*

ESCHER, FRANKLIN T. *Foreign Exchange Explained*. Pp. xii, 219. Price, \$1.25. New York: The Macmillan Company, 1917.

Students of banking and foreign exchange will be inclined to consider this volume merely a revision and expansion of Mr. Escher's *Elements of Foreign Exchange*. This supposition is incorrect, as the book has been entirely rewritten. The order of the material has been changed, there are some condensations and numerous additions.

The treatment is still the most satisfactory introduction to the subject that we have in the United States. The author writes clearly and simply. Some topics, however, could have been covered more fully to the advantage of both academic and practical students of the subject. One of these is a more complete treatment of the exchanges during the war. Some aspects of this are undoubtedly of temporary rather than of permanent interest but others are more significant. Probably the most important of these is the growing extent to which governmental

(or central bank) fiat is the controlling force in gold movements rather than the fact that exchange quotations have reached the gold points. Profits in foreign exchange dealings formerly dependent on the movements of these exchange quotations are now determined by the principles guiding our federal reserve board and similar bodies in other countries. An analysis of this influence, which has been growing in significance for some years is greatly needed.

E. M. P.

#### BUSINESS LAW

HUFFCOTT, ERNEST W. *The Elements of Business Law*. (Revised by George G. Bogert.) Pp. xiv, 319. Price, \$1.12. Boston: Ginn and Company, 1917.

A treatise such as this covering so many branches of the law, namely, contracts, sales, bailments, insurance, guaranty, negotiable instruments, agency, partnership, corporations and property, must of necessity deal very briefly with each of them. The author, however, has in part overcome the difficulty of limitation of space by adopting the plan of giving a very concise statement of the main principles of law, and illustrating the principles by short practical cases showing their application.

A feature of the book which is to be particularly commended is the plan of placing at the end of each chapter a number of concrete legal problems for solution by the student.

The problems are well selected and should accomplish the aim of the author of schooling the student in the application of legal principles to every-day problems.

C. N. C.

#### FOREIGN TRADE AND COMMERICAL GEOGRAPHY

PETERSSON, C. E. W. and STEVENI, W. BARNES. *How to do Business With Russia*. Pp. xviii, 202. Price, \$2.25. New York: Sir Isaac Pitman and Sons, Ltd., 1917.

This is a hand-book of substantial value to all who are interested in trade with Russia. About half of the book represents "a summary of the experience and business methods of Mr. C. E. W. Petersson, a merchant of Petrograd and Riga, who for many years carried on a large trade in machinery and kindred goods with various Russian towns." The remaining part, by Mr. Steveni, consists of a compact and illuminating description of the resources and business conditions of different portions of European Russia and of Siberia,—accurate, and suggestive of the immense wealth that lies idle for lack of development. Mr. Petersson's section (translated for this book) contains a great mass of details about business methods in Russia, and the banking and other machinery involved therein, together with sound and accurate advice as to legal remedies against Russian debtors. He does not mention, however, the very important law of August, 1916, by which the fraudulent transfer of property by debtors appears to have been made exceptionally difficult. Mr. Steveni points out the serious fact that previous Russian import tariffs have greatly interfered with imports into Russia, and suggests, what is unquestionably true, that Russia herself would be much better off by

making easier the import of machinery and other appliances on which her development is largely dependent. An item properly emphasized as of capital importance in trading with Russia, is the selection of agents, or agencies, to represent the foreign merchant or manufacturer. For Americans intending to enter the Russian trade, this point ought to be seriously—one might almost say prayerfully—considered. Business manners and methods in Russia are antipodal to those of America, and the wayfaring American exporter may readily go astray therein. To return to the book in hand, it is decidedly worth study. It is doubtful if any other on this subject in the English language is so full of good matter not otherwise readily accessible.

BENJAMIN BAKER.

Editor of "Russia,"  
New York City.

#### INSURANCE

BLANCHARD, RALPH H. *Liability and Compensation Insurance*. Pp. xii, 394. Price, \$2.00. New York: D. Appleton and Company, 1917.

Under the above title is published a book of 286 pages of descriptive material and 108 pages of an appendix. The main body of the book is divided into three parts: Industrial Accidents and Their Prevention; Employers' Liability and Workmen's Compensation; Employers' Liability and Workmen's Compensation and Insurance. The Appendices are made up of the New York Workmen's Compensation Law and policy contracts for this kind of insurance applying to a manufacturer's risks, together with an index.

In Part One, the author discusses the extent, character, and prevention of industrial accidents, and the results of accident prevention.

In Part Two are considered such subjects as the Law of Negligence, the defects of employer's liability, the historical development of workmen's compensation, together with a discussion of the legislation and legal questions which have arisen as a result of the enactment of these laws.

The subject matter of Part Three is concerned with the insurance under employer's liability and workmen's compensation legislation, including such subjects as the policy contract, the determination of rates, and the reserves to be held. The author has very well selected his material, and the general brevity of the treatment is to be commended. It would, doubtless, have been possible for the author to have written a book of much greater length, but his treatment will supply all the legitimate needs for the class room or for the general reader who wishes to acquaint himself with the development of insurance of this character, as well as the kinds which are now in force.

It is well known that there are many unsettled questions in this field of insurance, for example, whether workmen's compensation should be supplied by private companies or directly by the state, or such questions as the determination of the rates. The author does not attempt to dogmatize on these mooted questions.

At the close of the chapters, there is given a list of excellent references. One wonders why it seemed advisable to the author to divide 286 pages of material into twenty-two separate chapters. Some of the chapter headings seem unfor-



lunate, as, for example, Chapter 9, Chapter 10, and Chapter 11 in Part Two, each of which has a title "Workmen's Compensation Legislation in the United States and Territories."

In some cases the tables supplied are not legible and in a few cases there seems to have been careless proof reading. This, however, is a question of printing, rather than of the material, a minor defect which in no sense seriously weakens the general excellence of the book. The material, as a whole, is a very valuable addition to the sparse literature on insurance, and Mr. Blanchard is to be commended for making accessible in this field of insurance such an excellent, concise discussion of the subject.

W. F. GEPHART.

Washington University.

#### MERCHANDISING: WHOLESALE AND RETAIL

HOTCHKIN, W. R. *Making More Money in Storekeeping*. Pp. xix, 364. Price, \$3.00. New York: The Ronald Press Company, 1917.

This book lives up to the implication in its title: to help the storekeeper make more money. It is not a text on retail merchandising, but rather a series of inspirational editorials on nearly all phases of the business-getting side of modern storekeeping. The work is designed principally for the retail merchant and his employees, and it is especially helpful to the owners and employees of embryonic department stores. While not scientific in method, it is a book that would induce the retail merchant to make a scientific study of his business. It leads him to ask himself important questions about his business. For example: "Who doesn't buy in your store?" "What trade do you want?" "Do your people (meaning employees) believe in your store?" "What unprofitable departments can you kill?" Such questions are the titles of many chapters, the contents of which stimulate the merchant into an active desire for the solution of the problems the questions designate.

Although nearly all of the book is primarily inspirational both in material and in style of expression, there is a great deal of specifically instructive matter, especially in the parts on advertising and on the training of salespeople. In fact, throughout the book the author's long experience as advertising manager for John Wanamaker, New York, is evident in the wealth of concrete matter he presents.

The policies and methods advanced are all in accordance with the best of modern practice in retailing. The material, however, could have been stated more scientifically and in much smaller space, although that treatment would probably have robbed the book of its power to stimulate, which is its prime purpose.

H. McJONNIFON.

University of Illinois.

#### STATISTICS

COPELAND, MELVIN T. *Business Statistics*. Pp. xii, 696. Price, \$3.75. Cambridge: Harvard University Press, 1917.

Professor Copeland's volume is undoubtedly a step toward meeting a need which has long existed for some discussion of the application of statistical methods

to the practical conduct of business. These methods have come to be quite generally applied in the management of all large corporations within recent years and the necessity for some available description of such applications, especially in colleges of business administration, has been apparent.

No criticism can be made of the arrangement of the selections included. There is an exposition of some fundamental statistical principles which are necessary as a basis for subsequent discussions, followed by a number of articles on the uses of statistics in advertising, retailing, cost accounting, factory administration and business organization. Great care and attention evidently has been given to the judicious selection of articles, the reason for the appearance of most of these being apparent. Some objection may be made, however, to articles dealing with costs, not on the ground of their usefulness but for the reason that this has usually been considered a field preëmpted by accountants. Thus Bowley draws a distinction between statistics and accounting on the ground of the relative exactness of the figures. While we may not agree with the correctness of this reasoning we may still recognize that beyond a certain point in this direction the statistician becomes an accountant. On the other hand statistical training is highly valuable to the accountant.

Among the contents special mention may be made of the very excellent introductions to the various portions of the volume by the editor and also of the valuable and interesting articles by Messrs. Watkins, Mitchell, Copeland, Gantt and Alexander. The relative appeal of the articles dealing with special fields of course will depend somewhat on the direction of one's interest. Taken as a whole this volume will be gratefully received by many who will find good use for it as supplementary reading in courses on statistics and by business men to whom it will afford suggestions as to practical applications of statistics in their daily work.

ROBERT RIEGEL.

*University of Pennsylvania.*

#### TRANSPORTATION

MACGILL, CAROLINE E. (prepared by: under the direction of B. H. MEYER).

*History of Transportation in the United States before 1860.* Pp. xi, 678. Price, \$6.00. Washington: Carnegie Institution of Washington, 1917.

This is the fourth study to be printed in the coöperative economic history of the United States, planned and financed by the Carnegie Institution of Washington, the three which have preceded this one dealing with the subjects of commerce, manufactures, and labor. It covers the subject of road, water (canal and river), and railroad transportation from the beginning of our national period to 1860. The colonial period is practically dismissed with a single sentence: "Prior to the Revolution inter-colonial commerce was inconsiderable, and inter-colonial trade routes, where they existed, were entirely inadequate."

A great deal of preliminary work had been done on the subject of this volume by a number of collaborators, in the preparation of special studies, and these have been used freely in the writing of the completed narrative by Miss MacGill. In spite of the skill with which she has used this material and her own contributions in filling in gaps, the work is rather uneven both in fullness and merit. The sec-

tions dealing with roads are the least satisfactory; the description of the internal improvements is compendious, but more attention is given to a full compilation of facts than to an economic analysis of the new system as an agency of transportation. The same criticism might be offered regarding the chapters on the early railways, though an attempt is made to evaluate their importance in a final chapter.

It is evident that every effort has been made to insure a dependable and accurate account of the development of transportation in this country, and in this respect the work is a success. It is a perfect encyclopedia of names and dates and facts. A forty-page bibliography, a full index, and some excellent railroad maps add to its usefulness. Probably more credit for its excellencies are due to the editor, Dr. B. H. Meyer, than the modest preface would indicate.

E. L. BOGART.

*University of Illinois.*

BARNEY, WILLIAM JOSHUA (Compiled by). *Selected Bibliography on Ports and Harbors*. Pp. 144. Price, \$1.00. New York: The American Association of Port Authorities, 1916.

In this volume Mr. W. J. Barney, secretary of the American Association of Port Authorities, presents a selected list of references on the ports and harbors of the United States and the world's principal foreign maritime countries. It includes books, public and private reports, magazine articles, transactions of technical associations, statute citations and references to port regulations. The bibliographical list is divided into two parts: a place and subject bibliography. The former is classified by continents, countries and individual ports. The latter includes subjects such as port administration, free ports, belt lines, port and harbor engineering, costs, types of wharves, drydocks and freight handling facilities.

G. G. H.

## ECONOMICS

CHAPMAN, S. J. *Outlines of Political Economy*. (Third edition, revised and enlarged.) Pp. xvi, 463. Price, \$1.75. New York: Longmans, Green and Company, 1917.

Topical analysis and order of treatment are substantially the same in this as in the earlier editions. In many places there has been a rephrasing which improves the book for teaching purposes, and recent war developments have suggested additions which further contribute to the value of the volume. Two new, final chapters afford an interesting historical survey of economic doctrines.

R. C. McC.

GRUNDEL, JOSEF. *Economic Protectionism* (Ed. by Eugen von Philippovich). Pp. xiii, 347. Price, \$2.90. New York: Oxford University Press, 1916.

To Dr. Grunzel, economic activity is of three kinds—private economy, world economy and national economy. When people dwell within a certain area under

a given political jurisdiction their common economic interests transcend in importance physical, religious and other differences, and the national economy becomes the dominant economic unit. World economy is still in a primitive stage of development and a quest for its principles is vain. Nevertheless, world economic relations increase in complexity and tend to break into the national-economy sphere and economic protectionism appears. This protectionism is "the totality of those measures by which the national economy seeks to promote its interests in the world field."

Protective policies may be applied either to encourage or to discourage the movements of (a) commodities, (b) capital, or (c) labor, and therefore protective measures may affect each of the three either in a positive or in a negative manner. Thus conceived, the field to be surveyed is broad. A nation may in a negative manner influence the movement of foreign commodities into the country by customs duties, adjustment of freight rates, through administrative regulations or by concerted popular action, such as the boycott of foreign goods. Positive measures having the same intent are export bounties, special freight rates on exports, shipping subsidies and bounties, and other measures. Similarly capital movements may be discouraged by the interposition of obstacles in the way of foreign enterprises, the exportation of domestic capital and denationalization of capital. It may be encouraged by still other measures. Labor movements into and out of a country may also be encouraged or discouraged.

Thus conceived, economic protectionism is a broad subject. It is treated under three headings: (a) its genesis, (b) the directions it has assumed and (c) its effects. Past theories of protectionism are inadequate, partly because they apply chiefly to protective duties alone and partly because they assume a non-existent internationalism. A new theoretical basis is found in the fact that large investments of capital make imperative the largest possible stable market. Stability of markets both qualitatively and quantitatively may best be assured by "securing the domestic market to the business of a country by political means."

Dr. Grunzel's volume is the strongest modern presentation of the argument for protectionism. Its conception is broad and its treatment thorough. The reader is never in doubt as to the author's attitude but this apparent prejudice in favor of protective measures does not destroy the value of the treatment.

E. M. PATTERSON.

*University of Pennsylvania.*

TREVER, ALBERT A. *A History of Greek Economic Thought*. Pp. 161. Price, 75 cents. Chicago: University of Chicago Press, 1916.

Dr. Trever furnishes the English reader with a treatment of Greek economic theorizing "written from the standpoint of the classicist, but with a view also to the needs of twentieth-century students of economics." There is much in his treatment that is of distinct service to the latter group and doubtless also to the former.

WALLING, WILLIAM E. and LAIDLER, HARRY W. (Ed.) *State Socialism, Pro and Con*. Pp. xiv, 649. Price, \$2.00. New York: Henry Holt and Company, 1917.

*State Socialism* is defined as the policy of extending the economic functions of the state. Inasmuch as tendencies in this direction have been notable throughout the world for more than half a century, there is nothing new in kind about recent extensions of such activities. But the degree of progress has been so rapid since the beginning of the war that comprehensive samples of recent development are well worth collecting for general scrutiny and appraisal. Primarily a source book, with selections written by experts or skillfully chosen from official reports, the volume is in no sense a plea for collectivism. Its object is simply to show the spread of state socialism and to indicate the possible direction and extent of future growth.

Finance, transportation, the extractive and elaborative industries and social enterprises in the interest of the individual as citizen, consumer, producer and taxpayer, all receive illustrative handling which brings out the character and extent of recent collectivistic development. The task is well done. No attempt is made to force on the reader any particular point of view, but the mass of data leaves little room for doubt about what is really happening. Indeed, the accumulation of these data is so vast that the main field of usefulness of the book will doubtless be as a work of reference.

R. C. McC.

#### POLITICAL SCIENCE

BARKER, HARRY. *Public Utility Rates*. Pp. xiv, 387. Price, \$4.00. New York: McGraw-Hill Book Company, Inc., 1917.

GRUNSKY, CARL EWALD and GRUNSKY, CARL EWALD, JR. *Valuation, Depreciation and the Rate-Base*. Pp. viii, 374. Price, \$4.00. New York: John Wiley and Sons, Inc., 1917.

*Public Utility Rates* is a discussion of the principles and factors underlying charges for water, gas, electricity, communication and transportation service. The author is an engineer and associate editor of the *Engineering News*. He is thoroughly informed and his book is replete with sound information. Any writer on this subject must, under present circumstances, expect to have his book examined closely whether he leans corporation-ward or public-ward. Mr. Barker has tried to steer his course between the two, but in case of doubt goes with the corporations. The author says, for instance, that some 5 per cent is not an unwarranted amount for omissions in inventories though 2 or 3 per cent would seem to suffice for a large property of comparatively few items, and 15 per cent may be fair at the other extreme of a smaller property with many and scattered items which are difficult to check up. Those familiar with the decisions on this matter will see that the author justifies a much higher percentage for omissions than is usually accepted by courts and commissions. The author's analysis of depreciation as it affects utility rates is particularly keen and worthwhile. That the book came out in the year 1917 is evidenced by the following statement: "There have been cases of vociferous demand for higher rates to prevent calamity, where equal energy applied at home to the study of organization of men and the use of

materials and labor would go a great way toward the desired goal of larger dividends." This is no doubt the best general book on public utility rates as distinct from railway rates that has yet appeared. The book is full of solid information. Very ample footnotes and references are a guide for checking up the sources and character of information.

*Valuation, Depreciation and the Rate-Base*, however, does not equal this contribution. Neither is it so well tempered with concern for the public interest as well as for the corporate interest. The book covers old ground and does not do that particularly well. There are some tables in the Appendix which will be of material value and assistance. These have to do with Probable Useful Life, Expectancy and Remaining Value, Amount of One Dollar at Compound Interest, Value of One Dollar Due at a Future Date, Amount of an Annuity of One Dollar, An Annuity Which Will Amount to a Dollar in a Given Time, Present Value of an Annuity of One Dollar, Annuity Which One Dollar Will Purchase, and Amortization and Depreciation.

CLYDE L. KING.

*University of Pennsylvania.*

BEER, GEORGE LOUIS. *The English-Speaking Peoples*. Pp. xi, 322. Price, \$1.50. New York: The Macmillan Company, 1917.

This volume covers nearly all those phases of international relationships which have significance for today or for the future, and will appeal to the widest possible group of readers. After two introductory chapters, whose theme is the necessity of modifying radically our present conception of unlimited sovereignty, if we are ever to achieve any sort of effective international organization, the writer in the following three chapters shows clearly how our initial reaction to the war, one of lofty sense of isolation, was the direct result of our century long consistent foreign policy of non-interference in European affairs.

It is in the last three chapters, however, that the author really presents his main thesis. This is that there exists a fundamental unity of racial, cultural, economic, and political interests among the various English-speaking peoples. This contention is driven home with such a wealth of illustration that its fundamental truth is proved beyond any serious doubt. One cannot urge too strongly the desirability of a more general appreciation among our fellow citizens of this essential community of interests.

The volume, made up as it is in part of articles previously published, suffers from a lack of coherence. This defect is made more evident by the author's tendency occasionally to elaborate his arguments unnecessarily. Despite these defects, this book must remain one of the most suggestive that the war has thus far inspired.

J. G. McD.

JAMES, HERMAN G. *Municipal Functions*. Pp. xi, 369. Price, \$2.00. New York: D. Appleton and Company, 1917.

Pope, I think it was, who, taking advantage of the license popularly granted his profession, once surveyed the field of municipal activities, and concluded:

Of forms of government let fools contest;  
Whate'er is best administered is best.



We have many volumes that discuss the forms of municipal government, with detailed and comparative explanations of the powers and duties of the various officers, boards and commissions operating under any given system. With elaborations of the activities or functions themselves we have not been supplied so generously. This is the aim of Dr. James' book, and he has succeeded remarkably well. "Throughout this work but little attention has been devoted to the subject of governmental machinery, for the chief concern here has been to point out what every city should do no matter what form of government it might be operating under" (p. 347).

The author, however, does not agree with the poet's conclusion as to the organization of municipal government, observing "that while the end is much more important than the means, there may be a vast difference in the ease with which the end is to be accomplished, according to whether or not the most suitable means have been employed" (p. 347). This same spirit of intelligent toleration pervades all the many mooted questions discussed.

*Municipal Functions* surveys the field of the major activities of the typical city in such a way that it may be of great value as a guide to a college class in municipal administration. At the same time the average citizen will find it entirely readable. The relationship between success in management and the adoption of definite policies in municipal affairs is pointed out in every chapter. It is this feeling, unconsciously seeping into his mind, that will change the city dweller into a citizen.

The work of the various departments of the average city is taken up in detail. City planning, public morals, education, budgets and accounting, public works, health and safety are a few of the subjects given consideration. There has been a conscious omission of footnotes and bibliography.

Certain general conclusions are open to criticism. For example, there is ample reason for the contradiction of the statement (p. 146) in reference to prostitution. It is a recognized fact that it has not "been forbidden in every civilized country by law." Abraham Flexner, in *Prostitution in Europe* says: "In England, Italy, Norway, Holland and Switzerland there is no penal enactment against prostitution as such." In a memorandum to the Corporation of Glasgow, the Chief Constable declares: "Immorality in itself is no offense against the law." We are impressed, however, with the open mind with which the many controversial questions are approached. The author has no reformer's axe to grind at any point. In each case the facts are presented, pro and con, and the dogmatic conclusion, if there is to be one, is left to the reader for formulation.

H. G. HODGINS.

Cleveland, O.

KAWAKAMI, K. K. *Japan in World Politics*. Pp. xxvii, 300. Price, \$1.50. New York: The Macmillan Company, 1917.

Mr. Kawakami, a partly American-educated Japanese, so far as his advanced work is concerned, and a follower of Karl Marx who has modified his extreme socialistic views after an extended residence in the western part of the United States and marriage to an American woman, has become a somewhat prolific



writer, not to say propagandist, on the subject of the diplomatic relations of Japan and America. Whether one reads his *Asia at the Door*, his *American-Japanese Relations*, the present work, or his *Modern Germany* and other attempts in Japanese, the reader will be impressed with the same note through all of apologetics for his native land or the lament that neither has the United States nor have other Western Powers admitted Japan without reservation and fully into the comity of nations or to a complete social and legal equality. The author's announced and laudable motive is to promote friendly relations and good feeling between the United States and Japan, the two nations most concerned in the political and economic questions that determine the future of the lands bordering on the Pacific Ocean. The whole viewpoint, however, is essentially Japanese and asserts the following disputable and in my opinion untrue major premise that Japan has not received a square deal from America. This unhistorical attitude somewhat minimizes the author's chance of becoming the ideal interpreter of rational relations between the two countries, such as are typified in the Root-Takahira and Lansing-Ishii "gentlemen's agreements" which have signalized and emphasized the personal and national attitudes of America to Japan under the Roosevelt and Wilson administrations. It is safe to say that this attitude has never seriously varied since the days of Commodore Perry, on the part of the United States at least. Mr. Kawakami's book will and should be read, however, by all those who wish to be informed on moderate Japanese opinion on certain controverted diplomatic or economic questions between the two governments, especially on those relating to California, Mexico, the Philippines, China, and German ambitions and dastardly intrigue. It offers some antidote to the Jingoistic utterances, writings and doings of certain American, Japanese and German trouble-makers.

Mr. Kawakami has a personal axe to grind also because he desires to become a naturalized citizen of the United States and he regards our attitude against naturalization as the real menace to our future relations with Japan. Equally as fantastic is his doctrine that Japan, the most serious enemy of the "Open Door" in China and the chief power threatening Chinese "integrity," prior to Mr. Lansing's agreement with Ishii, has been the sole nation to fight to maintain these principles. The "Open Door" is well known as an American policy begun in the American-Chinese Treaty of Wang Hia and emphasized by John Hay.

J. C. BALLAGH.

*University of Pennsylvania.*

LAPP, JOHN A. (Compiled by). *Important Federal Laws*. Pp. xv, 933. Price, \$6.00. Indianapolis: B. F. Bowen and Company, 1917.

In this volume Mr. Lapp, whose legislative work is widely known, seeks to give within the compass of less than one thousand pages a compilation of the more important recent federal laws. He has succeeded admirably, has used excellent judgment in the selection of statutes and in summarizing, where this is necessary. The result is a remarkably compact and handy volume printed in clear, large type on thin paper,—a book that will be indispensable to the banker, the journalist, the lawyer, the lecturer, the teacher and the advanced student of social science. It will also prove a valuable reference work for general libraries.

The statutes cover a wide range of subject matter and are grouped together under the following heads: Agriculture, Vocational Education, Banking, Immigration and Naturalization, Business Regulation, Food and Drugs, Labor, Taxation, Commerce, Elections, National Defense, Trade Marks and Copyrights, Moral Reform, Bankruptcy, Criminal Code, Judicial Code, Health and Roads. Within these groups all statutes of importance up to those passed in the early summer of 1917 are given. Some interesting facts stand out from a perusal of these laws. Most of them have been passed or revised since 1910, showing how recent is the main body of regulative statutes. They provide for an extensive increase in the national administrative machinery to carry out their enforcement. A large proportion of them are based upon the federal power to regulate commerce, although many are not commercial in their chief purpose. While the legislation since the date of publication has been extremely important, especially in the field of taxation, the present compilation is highly satisfactory in all respects. Professor Lapp has performed a real service in selecting and bringing together in this convenient form the chief federal measures of present interest.

JAMES T. YOUNG.

*University of Pennsylvania.*

ROOT, ELIHU. *Latin America and the United States.* Pp. xvi, 302. Price, \$2.50. Cambridge: Harvard University Press, 1917.

Of the many notable addresses delivered by Mr. Root as Secretary of State and as a member of the United States Senate, certainly none have had a larger international influence than the series of remarkable speeches which he delivered during his tour through South America at the time of the Third Pan-American Conference held at Rio Janeiro in 1906. These addresses possess a significance far deeper than the mere formal greetings of a distinguished representative of the government of the United States. They breathe, not only a broad patriotism, but carry to our sister republics a message of true friendship and helpfulness. They mark a distinct epoch in the attitude of these nations toward the United States.

In Mr. Root's addresses there is totally absent that spirit of condescension characterizing so many American utterances; an attitude which has done much injury to our relations with Central and South America. Particularly notable is the address delivered at the Third Pan-American Conference. On this solemn occasion he summarized in admirable form the spirit which should dominate the relations of the American countries with one another. This one address should be read and re-read by the American people, and it is no exaggeration to say that future generations will find therein the best and highest expression of American foreign policy.

L. S. R.

BOXBURGH, RONALD F. *International Conventions and Third States.* Pp. xvi, 119. Price, \$2.50. New York: Longmans, Green and Company, 1917.

This is another addition to the series of contributions to international law now being brought out under the editorship of Professor Oppenheim of Cambridge University. Inasmuch as it deals with only one of the multifarious questions of

international law, it will appeal to the specialist rather than to the general student of international law. The author undertakes to answer a question which has never heretofore been the subject of research: What is the effect of international conventions on other states than those which are parties thereto? Recently this question sprung into importance by the case of *Costa Rica v. Nicaragua* before the Central American Court of Justice in which the Court held that the Bryan-Chamorro treaty of August 5, 1914, between the United States and Nicaragua violated certain rights of Costa Rica. The author reviews the principles laid down in the municipal laws of the more important states so far as they deal with the matter. He then summarizes and criticizes the opinions of the jurists and text writers who have previously considered the subject. Finally, he examines the precedents that have arisen in diplomatic practice, and on the basis of the information obtained from these three sources, he formulates his own conclusions.

Altogether the monograph throws much light on a hitherto neglected subject and as such it is a distinct contribution to the literature of international law. It contains a valuable bibliography of the authorities who have heretofore touched upon the question which he attempts to answer.

J. W. G.

### SOCIOLOGY

ELLWOOD, CHARLES A. *An Introduction to Social Psychology*. Pp. xiii, 343. Price, \$2.00. New York: D. Appleton and Company, 1917.

This is virtually a revised edition of the author's *Sociology in its Psychological Aspects* published in 1912. The subject matter has been somewhat modified and rearranged; the terminology varied; but the viewpoint is unchanged. The style is clear. The author knows the other writers in his field and presents their views accurately. He uses ordinary terms wherever possible and for this deserves much credit.

The first three chapters are introductory. In them are sketched social psychology, the evolution of organisms, and the nature of human society. In the next five chapters the nature of social unity is discussed at length as is also social change under normal and abnormal conditions. In the succeeding chapters special topics, such as the rôle of instinct and intelligence, imitation and suggestion, sympathy and consciousness of kind are treated, the closing chapter being in reality a summary on the nature of society.

It would be easy for the reviewer to discuss at length many of the views presented and to question certain of the conclusions reached. For instance the hedonistic explanation of conduct is rather lightly disposed of on the ground of the inborn activity of the organism without regard to external stimulus. I am not convinced that the problem ends there. The great question which comes to the mind is not concerned with the author's positions but has to do with the reliability of the data presented by psychology on which social psychology must be based. Here I have many doubts. Admitting this situation, I must compliment Dr. Ellwood on his ability to select and present his material. His discussion is timely and stimulating.

CARL KELSEY.

*University of Pennsylvania.*

HAMMOND, J. L. and HAMMOND, BARBARA. *The Town Labourer 1760-1832*. Pp. xi, 346. Price, \$3.50. New York: Longmans, Green and Company, 1917.

In the *ANNALS* for July, 1912 the reviewer had the privilege of calling attention to a previous volume, *The Village Labourer*, by these authors. The high standards set in the first work are maintained in the present study. It is scholarly and accurate; careful references being given to the authorities cited. It is very readable and full of human interest. The authors are to be congratulated upon their success in telling us of the life of the working people during one of the most important eras in English history. The problems created by changing industrial conditions are carefully analyzed and the mental attitude of the various groups clearly set forth. In fact, I think that this fair statement of the motives actuating the governing class, masters and workmen is probably the greatest contribution the authors have made.

From the rise of the manufacturing town, the book proceeds to describe the administration of justice, the rise of the trade unions, the employment of children in mills and mines. Attention then is turned to the attitude of the rich, their conscience, their philanthropy. Next follows the consideration of the resources of the poor, their spirit of union and religion, their ambitions. Incidentally considerable light is thrown upon various more or less well known personages.

The volume will be of interest and value to all who are concerned with industrial history or who desire to know more of the backgrounds of important social questions.

CARL KELSEY.

*University of Pennsylvania.*

LOCK, R. H. *Recent Progress in the Study of Variation, Heredity and Evolution*. (Fourth edition, revised by L. Doncaster.) Pp. xxiv, 336. Price, \$2.00. New York: E. P. Dutton and Company, 1916.

The purpose of the new revision of this work has been to make the smallest number of changes "consistent with giving a true idea of the present state of our knowledge." It is designed primarily to give a summarized description of the field of variation, heredity and evolution from the viewpoint of Mendelism. The terminology is somewhat simplified to serve the purposes of the general reader as well as the scientific public. The book is a useful summary of the field discussed from an up-to-date point of view.

J. G. S.

RICHMOND, MARY E. *Social Diagnosis*. Pp. 511. Price, \$2.00. New York: Russell Sage Foundation, 1917.

No task could be more difficult than that which Miss Richmond has undertaken; the reduction of the "rule of thumb" knowledge of case workers to a statement of the general principles on which all good case work, whether with the widow, the neglected child, or the homeless man, must rest.

This book is the ripe product of fifteen years of study and experience of one who has done much to develop and standardize methods of social case work. Social workers have waited for the publication with eagerness, and have found in it just the summary of the common knowledge, the fundamentals of case diag-

nosis which they most need in their daily work, in the training of volunteers, and in the more theoretical discussions of the class room.

The book is divided into three parts. In the first the nature and uses of case evidence are discussed with a summary of those lessons which medicine and the law have taught. In the second part the processes which lead to accurate case diagnosis are examined and the value of the various sources of evidence—friends, relatives, social agencies, etc.—is weighed. In the third part a set of type questionnaires is given for use by the worker dealing with any one type of disability, such as the unmarried mother, or the alcoholic, or the blind.

The title of the book is perhaps misleading, as the author does not discuss group relations and their influence on the individual, neither is there any implication that the maladjustments and misfortunes of the individual are more often due to social causes beyond his control than to personal weaknesses and defects. The book is entirely concerned with the principles involved in personal work with people in distress, and the various individual readjustments that might restore them to a normal status in the community.

While the book is distinctly a text-book and technical in character, it is so liberally sprinkled with illustrations from the daily experience of case workers, that it makes most interesting reading even for the layman, and will undoubtedly have a wide public appeal.

HELEN GLENN TYSON.

*State Supervisor, Mothers' Assistance Fund,  
Harrisburg, Pa.*

VOGT, PAUL L. *Introduction to Rural Sociology.* Pp. xvi, 443. Price, \$2.00.  
New York: D. Appleton and Company, 1917.

An introductory chapter, dealing with practical topics, is followed by a study of geographic environment in Chapter II. Chapter III deals with the improvement of agricultural methods, including the social effects of these improvements; Chapter IV, with good roads, the automobile, the telephone, and other means of communication, together with their effect on rural welfare; Chapters V and VI treat the land question, farm wages, and farmers' incomes; Chapter VII, population movements, including the cityward drift. Chapters VIII to XI deal with physical, mental and moral conditions of rural populations. The next eight chapters are devoted to rural organizations: political, economic, social, educational and religious. In Chapters XX to XXV, Dr. Vogt deals with the rural village, which he has wisely included in this work because the rural village is a component part of the agricultural community, although it is seldom adequately discussed in similar works and in courses in rural sociology.

Chapter XXVI takes up the reverse side of the rural problem, including the question of superiority of country or city birth, leadership, the rural exodus, and the social results of each. The last chapter discusses the rural survey as a means of approach to the rural problem.

At the end of each chapter are a few well selected references. Questions for study emphasize important points in each chapter, and should prove of great help to the instructor using rural sociology as an introductory course. The topics for research give valuable suggestions for field work and for special papers.

The book is written and arranged so well that anyone whose business it is to deal with rural problems will be able to follow his interest without having to be thoroughly versed in sociological theory. Yet the teacher of sociology will note many leads in the text that will enable him to link up in the minds of his students the practical discussions of the book with the principles of sociology. This is especially valuable, as so much called "applied sociology" seems to present no idea of the application of sociological principles.

HOWARD WOODHEAD.

*University of Pittsburgh.*

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# WAR ADJUSTMENTS IN RAILROAD REGULATION

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## FOREWORD

Long planned as a definitive treatment of certain measures generally agreed upon as constituting the next steps in railroad regulation, this volume was revamped almost over night by the necessity of war adjustments in the relation of the federal government to the railroads. Certainly no one could be more reluctant than the editor to speak as one with authority about the present or future of the railroads of the United States. However, by presenting opinions of widely varying tones and by making available to the readers of *The Annals* documentary material not generally accessible, it is hoped that this volume will afford some basis for clearer understanding of the present railroad situation and for public opinion to formulate regarding the socially desirable relationship between government and railroads after the war.

## SHORT BIOGRAPHY OF CONTRIBUTORS

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## BIOGRAPHY

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## FAILURES AND POSSIBILITIES IN RAILROAD REGULATION

By T. W. VAN METRE

When in 1906 and 1910 the federal law for the regulation of way transportation was amended to give the Interstate Commerce Commission the authority (1) to require railroad companies to make just and reasonable charges for their services, (2) to put a stop to objectionable discriminations, and (3) to forestall any attempts which the carriers might make arbitrarily to increase rates, it was hoped, and in many quarters believed, that the troublesome question of public regulation of rates on interstate traffic was finally settled. During the period that witnessed the movement culminating in the improved federal legislation the state legislatures were active in dealing with the railroads, and virtually every state has given a commission clothed with authority to regulate rates on interstate traffic. The "railroad problem" was regarded as solved. Private ownership and management were retained; an administrative organization designed to afford the public protection against exorbitantly high and unnecessarily discriminatory rates was established. It was thought that a policy which combined the double advantage of efficient private operation and effective public control would surely result in the development of a thoroughly satisfactory transportation service at rates reasonable to those who used the service and adequate for those who produced it.

Though this policy has been in effect more than a decade it does not seem to have had the entirely beneficial effect so generally expected. Expressions of dissatisfaction with the conditions of railway transportation have for some years grown steadily in number and in emphasis. While the complaints have not been due to the same causes which elicited protests and demands in former times, they have been none the less clamorous and insistent, and they have been concerned with matters just as vital to the general public, and with questions which touch an even greater range of interest than was previously involved. Owners and managers of railroad prop-

erty point to increased investment and declining returns, to bankruptcies and receiverships, to their inability to acquire investment funds necessary to enable the transportation system to keep pace in development with other branches of industry. The shipping public is resentful of continued car shortage, embargoes and impaired service, due to lack of equipment or to want of efficient railway organization, or to both. Railway labor, pressed nearer the subsistence level of income, asks for higher wages to meet the advancing cost of living, only to have the demand refused by employers, who, unable to increase arbitrarily the price of the commodity which they produce and sell, are themselves victims of increasing costs of raw materials and supplies, the prices of which are regulated neither by statute nor by commission. And in the midst of the gravest crisis in the history of the nation and of the modern world, we are confronted with the facts that the railway system of the United States is unable to meet the needs of the country; that while the system is probably more efficient than the railroad system of any other country, it has fallen far short of realizing the highest standards of economy and efficiency; that while the railways are handling a greater traffic than at any previous time they are falling short of supplying the demand for transportation; and that they are not even hauling the quantity of freight which they would possibly haul with their present equipment but with a different operating organization. In order that the people may secure food and fuel adequate to sustain life, in order to provide industry with raw materials, to save the tottering credit of the railroad companies, to anticipate the ominous situation which new demands on the part of railroad labor were about to create, and to make it possible for the country to take the effective part in the war for civilization which its huge resources and the will of its people warrant, the government has been compelled to take over the operation of the railroads. We have been forced to confess that our railroad policy has fallen far short of the ideal; the first acute emergency has compelled us to discard the entire structure of private operation and public control so laboriously and hopefully devised, of which so much was expected; by executive mandate the President is endeavoring to achieve the operating economies, long easily attainable but just as long wilfully neglected under the past policy of private management and public regulation.

The railroad problem is far from being "solved." It has entered a new, and, in most respects, a much more difficult phase. Why, after the long and apparently successful struggle to correct the wrongs of former days, are we compelled to acknowledge failure? Why are we confronted with questions more difficult and complicated than any previously encountered? And what is to be done in the future?

In answer it must be said that there are clear and definite grounds for complaint against both the system of private operation and the system of public regulation as they have hitherto existed. The outstanding fact about the system of private management is that it is inefficient because it has failed to achieve operating unity; it was for the purpose of securing a unification of the railroad line that the government assumed control of railroad operation. There is a general impression that the laws of the country have prevented unity of operation among the carriers, and a consistent attempt has been made to lay at the door of the government the failure of the carriers to coöperate in the use of their physical equipment. This impression is based on false assumptions. There is no federal law, and very few state laws, which stand in the way of coöperation among the carriers in the use of their facilities; the common use of cars, passenger terminals and tracks, is practised extensively, and it involves no violation of the law. The railroads have failed to "get together" merely because, in everything except the fixing of rates, the railroad business is a highly competitive business. The unification of terminal facilities and tracks requires that some carriers surrender certain monopoly advantages of location which they have long possessed, and such a surrender no company has ever been willing to make. There is hardly a large city in the country which has not provided a battleground for railroad strategists intent upon seizing and perpetuating the exclusive control of a favorable location. Railroad companies have captured and held with tenacious grasp the waterfront of our chief seaports and, assuming a dog-in-the-manger attitude, they have often failed to develop the property themselves and have forbidden the encroachment of others. Bodies of railroad workmen have fought pitched battles over choice bits of territory; millions of dollars have been expended in the defeat of aggressive competitors; public service has been a secondary consideration to monopoly privilege. The inefficient

and wasteful terminal systems in such great cities as New York, Philadelphia and Chicago have been enduring and impressive monuments to the lack of railroad unity. Sufficient money was wasted in the combat waged by the Wabash Railroad to enter Pittsburgh to construct a great unified terminal at that choked gateway from which it was necessary recently to divert all shipments of through freight.

It is useless to assume that the repeal of the anti-pooling clause of the Act to Regulate Commerce and the modification of the Sherman Law would pave the way for voluntary railroad unity. Those laws have not stood in the way of the operating unity sorely needed at many terminals, and the mere repeal of those laws will not affect the situation. Persons who place dependence in such legislative changes forget that former railway pools were organized solely for the purpose of controlling rates; pools were never intended to facilitate operating unity, and they never had such an effect. Railroad managers now accomplish, through informal rate agreements, all that they ever sought to accomplish through pools and formal rate agreements, and they are consequently entirely indifferent to the proposed changes in the law. Indeed the more astute managers are averse to these particular changes, which, if made, might create expectations on the part of the public which they have no inclination voluntarily to fulfill. There is no doubt that the formation of pooling agreements would make it easier for the railroad companies to effect the financial arrangements necessary to a plan of unified operation under private ownership, and if private operation is to be resumed it is desirable that pooling should be permitted; but the mere toleration of pools and rate agreements will not lead to the voluntary unification of physical facilities so long as railroad managers desire to continue their hold on their particular monopoly advantages.

In recognizing the fact that railroad managers have not gone as far as they might have done in improving the railroad service through unified operation we must bear in mind that scant measure of blame can attach to them for their failure. We do not expect a business man meekly to share his strategic advantages with every struggling rival. The ideal of American business has been competition, and the existing railroad laws are based upon the theory that railroads should be forced to compete with one another. Far

from compelling coöperative action among the carriers in the use of physical equipment, or for any other purpose, the law makers of the country have held steadfastly to the ideal of competition, endeavoring even to prevent railway coöperation in rate-making, a form of coöperation which is virtually indispensable to the satisfactory conduct of the railroad business. In pursuing this theory our legislatures have burdened our statute books with laws, designed ostensibly for the protection of the public, which have been probably a greater obstruction to the development of adequate railway service than the unfortunate policy of selfishness pursued by the railroad managers. Public regulation has scored as many errors, both of omission and commission, as has private operation.

The dual system of railroad regulation by state and federal authority is without doubt cumbersome and wasteful, and it has been a prolific source of conflict and misunderstanding. The state railroad and utilities commissions are not a conspicuous success from the standpoint of personnel. They are composed chiefly of lawyers whose main interests lie, if not in politics, in legal rather than in economic problems. Commissions of several states have been used as tools for disreputable political tactics; that they exist for the purpose of safeguarding one of the most vital business interests of the country seems to have eluded the understanding of not a few appointing officials. Ill-considered and unwise laws for railroad regulation have been passed with too great frequency; and the powers vested in commissions have often been used with injurious effects to the carriers, or just as often have remained unused to the detriment of the general public.

Underlying the entire bill of particulars against the present system of regulation, of which these counts are probably the most important, is the fact that virtually all legislation enacted for the purpose of controlling the practices of the railroad corporations is one-sided in character; it evidences a commendable effort to protect the shipping and travelling public from unfair treatment by the carriers, but it shows little evidence that the legislatures thought it would ever be necessary that special precautions be taken to safeguard the interests of the railroads. This situation, unfortunate though it be, is the quite natural result of the offensive attitude formerly assumed by the railroad interests. It was once a well-nigh universal custom of railroad officials to justify or to condone the

flagrant abuses of the transportation service, and it was their habit strenuously to combat all attempts made by legislative bodies to render their objectionable practices impossible. Total disregard by the carriers of the interests of the public which they served bred legislation in which little effort was made to consider the welfare of the railroads. Laws were of necessity fashioned as cudgels with which refractory selfish interests could be driven to a consideration of the rights of others and to a realization of their own duties and responsibilities; the stubborn opposition which the railroad interests exhibited to all legislation was chiefly responsible for the retaliatory character which the law assumed. The Act to Regulate Commerce, as amended, provides easy methods for the reduction of rates, and supplies only obstacles to the increase of rates; the Interstate Commerce Commission was definitely intended to be primarily a rate-reducing organization.

The necessity of using punitive methods in the past renders difficult the problem of forming a constructive program for the future. The old feeling of bitter resentment against the railway official of the "public be damned" type has not been eradicated. The average shipper looks with more complacency on rates which provide no net revenue for the carriers than upon rates which are ruinous to his own business. He has just as much difficulty in seeing that a reasonable rate involves the consideration of the welfare of the railroads as the railroad managers once had in seeing that reasonable rates involved a consideration of the welfare of the public. The old policy of brutal exploitation is having its natural, if undesirable, results.

A conspicuous effect of the new order has been the confession of former faults on the part of railway officials, a profession of repentance and a bid for forgiveness. All public regulation was once anathema; today regulation—"of the proper kind"—is accepted with apparent welcome. The almost universal spirit of willingness to receive guidance by public authority and the unanimous desire to let bygones be bygones speak well at least for the influence of past legislation with respect to moral regeneration.

It is an unfortunate thing that to many ears the professions of willing acquiescence in a new dispensation should smack strongly of deathbed repentance. "When the devil was sick . . . ." While it is unquestionably true that the majority of railroad officials



have seen a light, certain facts indicate in some quarters a want of sincerity, a lack of frankness, which, coupled with occasional regrettable lapses of conduct, tend to keep alive the old distrust and suspicions and to weaken belief in protestations of reform.

It would be easier to forgive and forget the excesses of railway capitalization indulged in a generation ago if, in the absence of proper administrative regulation, all railway officials would refrain from giving demonstrations of a present aptitude for similar excesses. The examples within the past few years of wanton wrecking of sound railroad financial structures for the purpose of enriching small groups of unscrupulous speculators have placed upon the record ample evidence that some of the trustees in charge of the transportation service are unfaithful to their trust and unfit to have a voice in the direction of public service. It is true that reputable railroad managers have condemned the acts of the speculators; but it is not customary for the public at large to discriminate carefully between the good and bad elements of any particular class.

Moreover virtually all railroad managers have endeavored to reap some advantage from the effects of the financial wrecking. A common feature of the widely published appeals for increased rates has been to call attention to the unprecedented mileage of railroad in the hands of receivers. It was widely advertised in 1915 that there was a greater mileage of line under the control of receivers than at any previous time in the history of the country, and this fact was earnestly presented as good evidence of the need for increased rates. A very brief analysis showed that two-thirds of the line in the hands of receivers had reached bankruptcy because of the shameful financial operations of the speculators who had secured control of the companies; the excessive mileage of insolvent railroad presented a much stronger argument for regulation of capitalization than for upward revision of freight rates.

Lapses of conduct have not been confined to buccaneering tactics in finance. The annual reports of the Interstate Commerce Commission record indictments and prosecutions for offenses which show every indication of having been wilful and deliberate infractions of the law. The persistence of attempts to evade or to violate the provisions of present laws serves to discourage disinterested individuals who otherwise would desire to help the cause of the railroads. Other acts have a similar effect. Just as one begins



to feel that the railroads are an object of persecution when a threatened strike brings about the enactment of a wage law, one's sympathy is subdued by the lack of candor shown by the railroad officials in waiting until the day after election to begin a test of the law in the courts.

Fallacious arguments and statements containing half truths weaken rather than help the position of the carriers. A statement widely circulated last year (1917) called attention to the fact that from 1907 to 1915 about five billion dollars was added to the capital account of the railroads, and that net income was thirty-three million dollars less in the latter year than in the former. From which it was deduced that the five billion dollar investment yielded a return that was thirty-three million dollars less than nothing, it being the apparent design to create the impression that because of the niggardly policy of the government this huge investment was in immediate danger of becoming a total loss. No mention was made of the fact that the year 1907 was an exceptionally prosperous year for the carriers, freight traffic being greater even than in the two succeeding years, nor of the fact that railway business in 1915 was at a relatively low ebb, traffic having been considerably less than in either of the two preceding years. Nor was it told that with the great increase of traffic in 1916 the rate of return on investment in Class I railroads (those having annual operating revenues in excess of \$1,000,000) was the greatest ever recorded. It might have been explained, too, that a large part of this investment, contributed chiefly from earnings, went to absorb the "water" of former years, which was always made to appear like real money in the investment accounts published before 1907. It is true that railroad income has showed a tendency to decline in recent years, but unqualified statements of this kind misrepresent the real conditions. They do more to frighten investors than does an adverse decision on an application for rate increases. In fact statements of this nature have aroused the suspicion that the carriers, by deliberately misrepresenting their condition, have endeavored to depress their own financial credit in order that their palpable inability to borrow needed funds on reasonable terms would bring an increase of rates which would enable them to pay for improvements out of earnings. Groundless as such a suspicion certainly is, its existence shows how it is possible for the railroads to arouse public

opposition by the very means they employ to win public sympathy and support.

It is highly desirable if private operation of railways is to be resumed that the retaliatory character of present railroad laws be eliminated, but such a desire will be difficult of attainment unless railroad authorities definitely abandon all lines of conduct which tend to keep alive the retaliatory spirit of the public. Misrepresentation of facts, violations of the law, and stock-jobbing must be halted if the confidence of the people is to be earned, and the desire to receive equitable treatment must be matched with evidence of willingness to act fairly. To the credit of railroad officialdom it must be said that a majority is evincing a spirit which promises well for the future. Unqualified abuse of present regulation is giving way to thoughtful discussions of its advantages and disadvantages; federal regulation of the issue of securities is advocated here and there; an honest endeavor is being made to suggest modifications in the present system of regulation which will provide for conserving the interests of the transportation system without depriving the public of adequate protection against unfair treatment.

On the other hand, the public is greatly in need of education. People have too long been led to believe that the interests of the railroads are diametrically opposed to all other business interests; they should be made to understand that the maintenance of the transportation system in an unimpaired state is of vital importance to the economic fabric of the nation, that the railway service should continue to develop and expand, and that existing obstacles to a healthy growth of transportation enterprise should be promptly removed. If suspicion and hostility can be replaced on all sides by a spirit of mutual confidence and tolerance the work of securing needed changes will be easy.

That some adequate system of railroad regulation can be devised which will permit the railroads to prosper and give efficient service at reasonable rates is not to be doubted, and it is with this goal in view that the next steps in railroad regulation must be taken. The United States is not prepared to adopt a program of government ownership of railroads, and it is to be hoped that once the present crisis is passed the railroads will be returned to private management and a system of regulation devised under which satisfactory results may be obtained. We certainly shall never

return to the policy recently abandoned, which has proved such a lamentable failure, and if government ownership is to be avoided we should begin at once to take stock of failures and successes and to make plans for the future. We do not have too much regulation or too little regulation; what we suffer from is an unwholesome combination of good legislation, bad legislation and no legislation. Purposes have been obscured by prejudices; we have been given drastic remedies for imaginary ills and no remedies at all for real diseases. There are a number of radical changes that can be safely made which would go far toward establishing our regulative system on a fundamentally sound basis, and would render easy the working out of the details of a harmonious and constructive policy.

The dual system of regulation as carried on at present inevitably leads to a violation of the fundamental principles upon which regulation is based: that rates shall be just and reasonable, and that they shall not be unduly discriminatory. While it is possible technically to distinguish between interstate and intrastate traffic there is in an economic sense no real distinction between them. If two cents a mile represents a just and reasonable charge for an intrastate passenger journey it can not be possible that a fare of two and a half cents a mile is a just charge for a ride taken under similar conditions but extending across an imaginary line designated as a state boundary. When dissimilar rates exist for two freight services in every way similar except that the haul in one case crosses a state boundary there is no escaping the conclusion that if one of the rates is reasonable the other is not. Whenever a railroad is compelled by virtue of the ruling of a state commission and by the pressure of competition to reduce an interstate rate, supposedly reasonable and declared so by the Interstate Commerce Commission, either the railroad is forced to accept unduly low remuneration or a disagreeable reflection is cast upon the judgment of the federal commission. If an adjustment of the interstate rate is not made to meet changes in an intrastate rate an undue discrimination is created and the dual system becomes the means of defeating the very purpose for which regulation exists. As to how this paradoxical situation may be best treated there is much difference of opinion, some people believing the problem can be met by securing coöperative action of the various regulative agencies, and others inclining to the plan of eliminating state control of railroad rates, leaving

the work entirely to a commission or commissions of the federal government. The fact that nine-tenths of railroad traffic is interstate and consequently already under the jurisdiction of the federal commission would seem to indicate that the remaining tenth could be safely entrusted to its authority without any undue increase of its work and with a considerable gain in the efficiency and uniformity of regulation.

The urgent need for a unified system of regulating the issue of securities by railroad corporations and the almost unanimous belief that this function should be entrusted to federal authority leads one to wonder why it takes so long to secure a law by which this much needed change may be accomplished. When such a law is enacted it is to be hoped that it will also include provision for some supervision of the expenditure of funds derived from the sale of authorized securities. There is a serious question in many minds as to the wisdom with which the large investments placed in the railroad business in recent years have been used. The wholesale expenditure for the construction of huge passenger terminals at a time when the need for improved freight terminal facilities was probably much more pressing has been looked upon with some disfavor both on account of the disparity of income from the freight and passenger business and because in many cases the passenger terminals represent costly duplications of effort with results that do not show much progress toward an ultimate solution of the problem of handling a rapidly congesting passenger traffic.

There should be devised some plan by which needed increases in rates can be secured with more expedition and promptness than appears to be possible under present conditions. It is not advisable that the authority of regulative agencies to suspend proposed increases be withdrawn, but it would probably be helpful if the time of rate suspensions were made shorter than is now customary. It is of the utmost importance that the credit of soundly financed railroads be maintained, and this can be done only if methods are devised for meeting promptly sudden emergencies. Rates are now flexible in but one direction and it is extremely difficult for the carriers to adjust their charges so as to meet the rapid increases in wages and prices of materials. If the power to name minimum as well as maximum rates were given to the Interstate Commerce Commission the income of the railroads would receive a greater

measure of protection. Since the charges which the railroads are allowed to make for their services are strictly regulated by commissions, if there is to be regulation of wages and of prices for materials it should be entrusted to the same authority by which income is controlled.

The adoption of a plan which would insure a more general representation on railroad commissions of the various business interests involved in the success of the railroads would be a step of progress. Laws are passed dealing with the financial management, the accounting, the operation and the rates of railroad corporations, but there is a marked dearth of bankers, engineers, railroad traffic managers, industrial traffic managers and accountants among the appointees to railroad commissions. It is probably too much to expect that under present conditions of government it would be possible to elect executives who would lay aside politics in making appointments to administrative bodies charged with the important duties of regulating private business. The increase of the salaries of commissioners, in order to make the positions attractive to suitably equipped individuals, has usually served only to increase the value of the position as a part of the political spoils and to stimulate the scramble of the unfit for the appointments. The constant change of the personnel of commissions makes it impossible for them to do well the work for which they are chosen. The English custom of providing by law that some members of commissions shall possess certain qualifications might well be given a trial in this country.

And finally as a *sine qua non* of a resumption of private operation provision must be made for the permanency of the operating unity now going into effect. Two things will have to be done. The carriers must be permitted to enter pooling agreements by means of which the financial adjustments necessary to operating unity may be effected; the carriers must be required to combine their physical facilities wherever such combination will result in improved service. There is no reason for limiting the unified "continental railway system" to the duration of the war; its proved advantages will be all the more valuable with the return of peace. It must not be expected that the railroad companies will voluntarily enter agreements for unity of operation, though it is highly probable that the present experience with unification under government

control will render compulsion less difficult. In the main, the joint use of facilities will be confined to terminals, where the wastes of competition have been greatest. Saving must be accomplished, however, through a more elastic system of routing shipments; the expensive duplication in passenger service may be cut down; and the necessity for private car lines and express companies—parasitic organizations which came into existence solely because of the lack of a unified system of operation—will be entirely eliminated; such companies have performed a real public service in the past, but with unity of railroad operation they will exist for no useful purpose. The chief economy will be effected, however, through the reconstruction and reorganization of terminals; it begins to appear that the time is forever past when the shamefully wasteful terminal operation, which exists merely as an evidence of the monopolistic power of a strongly entrenched special privilege, will be permitted to stand unchallenged. The willingness or the unwillingness of the carriers to acquiesce in coöperative arrangements which plainly make for increased efficiency will be the deciding factor in the coming controversy over government ownership.

## FEDERAL CONTROL OF RAILROADS IN WAR TIME

BY MAX THELEN

On December 26, 1917, President Wilson issued his historic proclamation taking possession and control of the railroads of the United States and appointing William G. McAdoo, Secretary of the Treasury, as Director General of Railroads. By this bold and timely act, the President, in a single moment, accomplished an economic change of tremendous significance and of far-reaching potentiality for increased national efficiency during the war.

The American railroad system of which the government of the United States is now officially in possession and control, is a system of 262,000 miles, constituting over 40 per cent of the railroad mileage of the entire world, a system with securities outstanding in excess of \$17,000,000,000, a system to which the American people have always pointed with pride as the best of all railroad systems.

In addressing myself to my subject, Federal Control of Railroads in War Time, I shall first describe the organization of our railroads during the war prior to the President's proclamation. Next I shall consider some of the problems with which the railroads have been confronted during the war. Then I shall draw attention to the solutions of the problem suggested by the Interstate Commerce Commission and to the solution made effective by the President's proclamation. Finally, I shall give some consideration to the results which may reasonably be expected to follow from government operation of the railroads during the war.

### WAR ORGANIZATION OF RAILROADS IN OTHER COUNTRIES

In all the principal nations of Europe, the railroads are being operated during this war by the government.

In England, prior to the present war, private capital had always owned and operated the railroads. On August 4, 1914, the very day on which England declared war against Germany, the British government took over the operation of all the railroads. A committee of which a Cabinet member is the general chairman manages the railroads but their actual operation remains in the hands of



the former operators. All government traffic is carried free and no account thereof is kept. The government guarantees to the holders of railroad securities the same net revenue as the railroads earned in 1913, the last complete year before the war. If there is a surplus, the government keeps it and if there is a deficit the government meets it out of the treasury.

In France, prior to the war, one railroad was owned and operated by the government and the others were owned and operated by private capital. Upon the outbreak of the war the French government immediately took over the operation of all the railroads.

In Germany and Italy, the railroads were owned and operated by the government prior to the outbreak of the war. In these countries public ownership and operation have continued during the war.

#### WAR ORGANIZATION OF RAILROADS IN THE UNITED STATES, APRIL 6-DECEMBER 28, 1917

In the United States, with the exception of the Panama Canal Zone and approximately 250 miles of railroad in Alaska, our railroads have been owned and operated by private capital. Prior to December 28, 1917, the United States was the only nation of any consequence which during this war continued the ownership and operation of its railroads by private capital.

On August 29, 1916, more than seven months prior to the entry of the United States into the world contest, this government cleared the way for the operation of our railroads directly by the government, if such course should become necessary in war time. On that day President Wilson signed the Army Bill, which bill provided in part as follows:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same to the exclusion, as far as may be necessary, of all other traffic thereon for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

This is the provision of law on which President Wilson particularly relied in issuing his proclamation of December 26, 1917. Prior to this proclamation, the power conferred by this sentence of the Army Bill of 1916 had been exercised by the government with reference to only one small railroad in New Jersey.

On April 6, 1917, the Congress of the United States declared that a state of war existed between the United States and Germany. On the preceding day, Franklin K. Lane, Secretary of the Interior, introduced and had passed by the Council of National Defense the following resolution:

*Resolved*, That Commissioner Willard be requested to call upon the railroads to organize their business so as to lead to the greatest expedition in the movement of freight.

Acting in accordance with this resolution, the principal railroad executives of the country met in Washington on April 11, 1917, and resolved that during the war they would coördinate their operations in a continental railway system, merging during such period all their merely individual and competitive activities in the effort to produce a maximum of national transportation efficiency. The direction of the continental railway system thus organized was placed by the railroads in the hands of the executive committee of the Special Committee on National Defense of the American Railway Association. This executive committee was also known as the Railroads' War Board.

Under this resolution, the railroads of the United States continued until December 28, 1917, to be operated under private ownership and private management.

On May 29, 1917, President Wilson signed an act of Congress giving to the Interstate Commerce Commission jurisdiction over railroad cars used in the transportation of property by any carrier subject to the provisions of the Interstate Commerce Act. The Interstate Commerce Commission thereupon created a Division of Car Service. Authority with reference to car service was also claimed and exercised by a committee of the railroads known as the Committee on Car Service of the American Railway Association, and by the War Department, the Navy Department, the National Food Administration, the National Fuel Administration and the Shipping Board.

While the Interstate Commerce Commission was thus granted all the necessary authority to act, the Commission has thus far issued no order under the car service statute and has been content to permit questions of car service to be disposed of largely by the railroads' own committee on car service. The fact that at least

six separate and distinct authorities, five governmental and one private, assumed jurisdiction over the question of car service of course resulted in great confusion and inevitably demanded that the entire matter be placed in charge of a single responsible authority.

On August 10, 1917, President Wilson signed an act of Congress making it unlawful by physical force or by threats of physical force to obstruct or retard the movement of cars or trains engaged in interstate or foreign commerce. The same act authorized the President, whenever he may find it necessary for the national defense and security, to direct that such traffic as, in his judgment, may be essential to the national defense and security, shall have preference or priority in transportation. The President is authorized for this purpose to issue orders either directly or through such person or persons as he may designate for that purpose or through the Interstate Commerce Commission.

Under this statute, President Wilson appointed Robert S. Lovett as Director of Priority in Transportation. Judge Lovett issued five orders calling for priority in railroad transportation. The first order provides for preferential shipments of bituminous coal to points on the Great Lakes. The second order declares that open top cars other than flat cars shall not be used for the transportation of materials and supplies for the construction or repair of streets, roads and highways, theatres and other buildings used for amusement or of pleasure vehicles, furniture or musical instruments. The third order provides for the priority of the transportation of coal from the coal mines of Utah and Wyoming to the west and the northwest. The fourth order provides that the railroads of Texas shall give preference to the transportation of cottonseed cake and cottonseed meal to feed the starving cattle in Texas and New Mexico. The fifth order designates the order in which materials and supplies for the government, war industries and other essential industries shall have preference or priority in car supply and movement.

The reason for the enactment of the Priority Statute was the frank statement of the railroads that they would be unable during the war under their existing organizations to carry all the traffic which might be offered for transportation and their desire that some legal method might be provided by which priority or prefer-

ence in transportation might be given to the most essential commodities.

### SPECIAL WAR PROBLEMS

Having sketched the organization effected by the railroads and the official action taken by the government prior to the proclamation of December 26, 1917, I shall now address myself to a few of the more important problems with which our railroads were confronted as the result of the war.

In this connection I shall refer first to the car shortage problem, then to the financial condition of the railroads and then to the difficulty of securing labor and equipment.

#### *Car Shortage*

From the nation's point of view, the most serious problem with which the railroads have been confronted is their growing inability to transport the nation's traffic. Car shortage is not a new phenomenon. It existed in the United States prior to our entry into the war. A serious car shortage existed in the fall of 1912. During the latter part of 1916 and the early part of this year the car shortage situation, as is well known, was acute. The car shortage which existed prior to our entry into the war has been accentuated by it. The congestion of terminal facilities, the requisitioning of coastwise shipping by the federal government, the tremendous increase in the number and output of industries engaged directly or indirectly in the manufacture of materials and supplies used in war, and the transportation of men and materials to and from our army cantonments have all served to increase the difficulties encountered by the railroads in seeking to transport the nation's traffic.

Active coöperation between the railroads, the shippers and the public authorities materially increased car efficiency. The shippers exercised greater promptness in the loading and unloading of cars and greatly assisted by loading cars to capacity. The railroads increased the daily mileage of freight cars and locomotives, decreased the time during which equipment was in repair shops, eliminated some unnecessary passenger mileage and requisitioned between 150,000 and 200,000 empty freight cars from railroad systems where they were not immediately needed to other parts of the country where most needed. The public authorities, both state

and federal, gave publicity to the existing conditions and advised and encouraged both the railroads and the shippers to do their full part to help meet the exigency.

The net result of the combined activities of the railroads, the shippers and the public authorities was stated by the Railroads' War Board to be an increase in the efficiency of the existing equipment amounting to approximately 15 per cent. In other words, after the entry of the United States into the war, practically the same amount of railroad equipment handled approximately 15 per cent more traffic than was handled before the war.

For a while, the reports on unfilled car requirements, as published by the railroads, showed apparently a great improvement in the situation. The car shortage, as shown by these reports, decreased from 148,627 cars on May 1 to 31,591 cars on September 1. However, by October 1 the car shortage increased to 70,380 cars and by November 1 to approximately 140,000 cars and subsequent to November 1 the situation continued to grow worse. Under these conditions, more drastic suggestions than any theretofore made were offered in an effort to meet the situation. Dispatches from Washington indicated that the railroads supplied to Judge Lovett and to Fuel Administrator Garfield a list of 525 commodities the transportation of which was regarded by the railroads as least essential and it was suggested that an order might shortly be made by Judge Lovett providing that the transportation of such commodities should cease in favor of arms and munitions, coal, food and other absolutely essential commodities.

Coming close on the heels of these dispatches, the railroads east of Chicago agreed to pool all their facilities in an effort to provide greater transportation efficiency. They agreed to pool their shops, coal and other supplies; to pool and redistribute all open top freight cars; to divert traffic from congested railroad lines to open routes, and to ask for a rearrangement of the transportation of coal from mine to market. These matters all seem to be covered in the agreement made by the railroads on April 11, 1917, but were not undertaken by the railroads until the latter part of November and then only in eastern territory. By reason of the anti-pooling section of the Interstate Commerce Act, the agreement of the railroads could not and did not contemplate the pooling of earnings.

After eight months of effort, the car situation was worse in the latter part of December than it was when the United States entered the war and it was clear that measures more drastic than any theretofore taken would have to be applied if the nation's essential transportation needs were to be supplied.

### *Railroad Finances*

Railroad finances presented another important and serious war problem.

Prior to the entry of our country into the war, prominent railroad executives made the statement that the railroads needed one billion dollars yearly for at least ten years for the construction of additions, betterments and extensions and to enable the railroads to keep up with the country's requirements for increased terminal facilities, freight and passenger equipment, double tracks and other railroad facilities. I shall not take time now to consider why these necessary improvements were not made by the railroads and why it has been difficult or impossible for many of them to secure the necessary funds. Suffice it to say that the requirements for additional construction and facilities which existed prior to the war were strongly accentuated by the war. During the war, more than ever, the railroads need additional cars, additional locomotives and additional terminal facilities. How could they secure the necessary funds?

The normal method of securing funds for capital expenditures is the sale of securities. During the war, however, it will be practically impossible for the railroads to secure large amounts of additional capital by the issue of their securities on their own credit and their sale to the investing public in competition with liberty bonds and other government securities.

As the war progressed, it became increasingly evident that the railroads would be unable on their own responsibility to meet the war's imperative requirements for additional terminal facilities, double tracks, cars and locomotives.

### *Labor and Equipment*

One of the most serious problems with which the railroads were confronted as a result of the war was the necessity of securing enough labor to maintain their way, structures and equipment in

safe and serviceable condition. The call to the armed forces of the nation and the competition of other industries have seriously depleted the supply of labor available to the railroads and they have no effective means to replenish the supply. Likewise, it became increasingly difficult for the railroads to secure the necessary equipment, materials and supplies. Locomotives and cars ordered by the railroads last summer have not been delivered and there seemed no reasonable prospect for their delivery before the expiration of many more months.

### SOLUTION OF PROBLEM

As the fall of 1917 advanced, it became more evident, day by day, that the nation's railroad war problem could not be satisfactorily solved under the existing system and that a radical change was imperatively required to prevent a complete break-down of the nation's transportation system.

#### *Report of Interstate Commerce Commission*

In view of these conditions, the Interstate Commerce Commission on December 1, 1917, filed with the Senate and the House of Representatives a special report on transportation conditions as affecting and as affected by the war.

The Commission said in part:

Since the outbreak of the war in Europe, and especially since this country was drawn into the war, it has become increasingly clear that unification in the operation of our railroads during the period of conflict is indispensable to their fullest utilization for the national defense and welfare. They must be drawn, like the individual, from the pursuits of peace and mobilized to win the war. This unification can be effected in one of two ways, and we see but two.

The Commission then stated these two ways. The first is operation as a unit by the carriers themselves, requiring the suspension during the war of the anti-pooling section of the Interstate Commerce Act, a modification of the anti-trust laws in so far as railroads are concerned and loans to the railroads by the government for capital purposes. The second alternative is operation as a unit by the President as a war measure.

Commissioner McChord filed a separate report in which he holds that "the strong arm of governmental authority is essential if the transportation situation is to be radically improved."

That continued private operation of the railroads by the car-



riers themselves, being the first alternative suggested by the Interstate Commerce Commission, would not solve the problem seems clear for a number of reasons.

First, private operation of the railroads is in its very nature incompatible with war needs. Under private operation, each railroad very naturally seeks to gain all possible traffic so that it may be able to pay interest on its bonds and notes and, if possible, dividends on its stock. The price of failure to secure sufficient traffic is bankruptcy. On the other hand, while the nation is at war, traffic should be moved with an eye solely to the greatest efficiency in helping to win the war. The most efficient operation of the railroads as a war agency may require that traffic be diverted entirely from one railroad whose terminals are blocked to another whose terminals are open; that traffic be diverted in whole or in part from one railroad to another railroad which can be more economically or efficiently operated; that one of two parallel, competing lines be operated solely for west-bound or north-bound freight and the other for east-bound or south-bound freight, or vice versa; that certain railroads stop carrying passengers and that others stop carrying freight; and that any number of other acts be done all of which will take traffic away from one railroad and give it to another and thus interfere with railroad earnings. Private operation in its very nature can not solve these problems. Government operation can.

Second, private operation can not during the war secure the funds imperatively needed by the railroads for additional capital expenditures.

Third, private operation can not during the war secure an amount of labor sufficient to maintain railroad properties in safe and serviceable condition, nor can private operation secure with sufficient promptness all the necessary equipment, materials and supplies.

Hence it appeared quite clearly that the nation would be driven to the alternative of direct operation by the government itself.

#### *President Wilson's Proclamation*

By his proclamation of December 26, 1917, President Wilson took possession and control of all railroads and shipping owned or controlled by them, engaged in general transportation, whether

operated by steam or electricity. Street railways and electric railroads commonly known as interurbans are for the present excluded from government operation.

The President appointed William G. McAdoo, Secretary of the Treasury, as Director General of Railroads with power to operate all the transportation systems affected by the proclamation. The proclamation declares that until and except so far as the Director may from time to time otherwise determine, the operation of the railroads shall be continued by their officers and employes in the usual and ordinary course of business in the names of their respective companies. The President also directs that until and except so far as the Director may from time to time otherwise determine, the transportation systems affected by the proclamation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission and to all statutes and orders of regulating commissions of the various states. All orders of the Director, however, shall have paramount authority and be obeyed as such. The Director is instructed to enter into arrangements with the various companies for a just and reasonable compensation to be paid to them for the possession and use of their properties "on the basis of an annual guaranteed compensation, above accruing depreciation and the maintenance of their properties, equivalent, as nearly as may be, to the average of the net operating income thereof for the three year period ending June 30, 1917."

The result of such negotiations must be reported to the President for his action. The proclamation contains other provisions to which it is not now necessary to refer.

In a statement accompanying the proclamation, President Wilson declared that immediately on the re-assembling of Congress he would recommend that definite guarantees be given to the railroads, first, that their properties will be maintained during the period of federal control in as good repair and as complete equipment as when taken over by the government and, second, that they shall receive a net operating income equal in each case to the average net income of the three years preceding June 30, 1917.

To complete the plan, legislation would also seem to be necessary with reference to the part which the government must undoubtedly play in connection with securing the funds needed for railroad additions, betterments and extensions while under government operation.

In accordance with the terms of President Wilson's proclamation, the possession of all the transportation systems therein described passed to the government of the United States at noon on December 28, 1917, and they are now being operated under the control of the federal government acting through Director McAdoo.

#### RESULTS FROM GOVERNMENT OPERATION

It is too early to predict and it may be indelicate to suggest the details of the plan of government operation which must be worked out by Director McAdoo. The broad outlines, however, of what may be accomplished by government operation of the railroads during the war seem well marked. The government can (1) disregard absolutely all previous traffic conditions and can operate the railroads as a single system with an eye solely to the maximum efficiency to meet the nation's war needs; (2) divert all or a part of the traffic, passenger or freight or both, of one railroad and give it to another, which can transport it more economically or efficiently; (3) eliminate all property and employes used and all expenditures incurred in the purely competitive activities of the various railroads, effect tremendous savings in construction and operating expenses, and utilize the man power thus saved for necessary railroad work or for other useful and necessary activities; (4) secure on reasonable terms the funds necessary for additional terminal facilities, equipment and other additions and betterments; (5) secure the labor necessary to keep railway properties in safe and serviceable operating condition and can expedite the manufacture for the railroads of necessary cars, locomotives and other equipment.

That Director McAdoo will be successful in accomplishing these results and will thereby greatly increase this nation's efficiency during the war is the earnest hope of every patriotic citizen.

What the effect of government operation of the railroads will be on the movement for government ownership is a question which will be much discussed. If government operation is a success, a powerful stimulus will undoubtedly be given to government ownership. In the meantime, every effort of the nation should be concentrated on making government operation an unqualified success. Whether government ownership will follow government operation is a question which we can answer when we have won the war.

## PRINCIPLES AND PRACTICES OF CAR SERVICE REGULATION

BY H. E. BYRAM

The problem of car service may be stated briefly as the formulation of a plan whereby freight car equipment may be made to perform the maximum of service in a unified system of transportation with the minimum of sacrifice of the rights of the owner of the cars. Under this definition the subject presents two distinct phases, one economic, the other financial.

In what manner shall car service be regulated in the public interest so that each unit shall furnish the greatest amount of transportation?

How shall it be regulated so that rights of possession and compensation for use will be equitably adjusted as between the owner and the user of the equipment?

The managers of the railroads and of other concerns which own the cars must consider the problem from the standpoint of the interests of their own concerns; but they must also consider it from the standpoint of the public welfare. The governmental regulating authorities are apt to consider the problem primarily from the standpoint of the public; but they should not ignore the interests and the rights of the companies which have invested capital in cars. Therefore, while regulating authorities may put more emphasis on the interests and rights of the public, and the railway managers may put more emphasis on the interests and rights of the individual companies, there really is no fundamental difference between the problem of car service as it presents itself to the railway manager and to the regulating body; and there can be no substantial difference between their solutions of it, if each gives due weight to both the private and the public rights and interests involved. It will be desirable to review the methods the railways themselves have used in dealing with the problem of car service before discussing the problem presented by regulation of car service.

Even under the system of car interchange in force before normal conditions were disturbed by the entrance of the country into the Great War, the railway industry of the United States, in its han-

dling of car equipment, bore some of the aspects of a single system. The complexity of the problem of car service, even under normal conditions, had constantly grown greater. It had been influenced by the number of conflicting interests involved, which had increased in number through the advent of new and the dissolution of previously consolidated organizations; by the great extent of territory through which car equipment was handled; by the development of specialization in the adoption of equipment for the handling of particular commodities; but more than all by the aggregate increase in the demands of industry for adequate equipment facilities, the occasional scarcity of equipment, and a recognition of the economic necessity, under any condition, of securing the best possible utilization of existing equipment. However important the problem may be under normal conditions, its importance is greatly magnified when, as now, it is essential that every item of transportation equipment be made to perform its full part in carrying out the purposes for which we are engaged in the war.

#### ELEMENTS OF THE PROBLEM

The general term "car service" is commonly used to designate all that concerns the handling of the car as a vehicle of transportation, not only as between one railway and another, but also as between railways and the shipper or consignee. On June 30, 1916, according to the statistics of railways compiled by the Interstate Commerce Commission, there were in service in this country approximately two and one-half millions of freight cars. Of these, about 2,300,000 were owned by railway companies, and the rest by private car line companies, mining companies, etc. The number of the different classes of cars owned by the railways were as follows:

Box cars	1,024,418
Flat cars	136,719
Coal cars	899,638
Stock cars	83,487
Tank cars	9,828
Refrigerator cars	51,746
Other cars	92,427
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Total	2,298,263

The mileage of all railways in the United States on the same date was 259,210 miles. There are then on the railways of the

United States approximately 9 freight cars per mile of railway. The ownership of these cars, excluding those of private ownership, is in the hands of about 1,000 railway companies. The number owned by each company varies from a few cars to upwards of 250,000.

#### JOINT USE OF CAR EQUIPMENT

The plan under which railways have for many years used equipment interchangeably is the result of voluntary action on the part of railways themselves to the end of securing greater facility of operation and hence more efficient service. The Interstate Commerce Commission has always recognized the commercial necessity of through shipments, and consequently the movement of cars over other than the owning roads; and, indeed, the original Act to Regulate Commerce seems to recognize it, though in a negative way. The Act, approved on February 4, 1887, provides that

It is unlawful . . . . . to enter into any . . . . . agreement . . . . . to prevent . . . . . the carriage of freight from being continuous from place of shipment to place of destination . . . . . by carriage in different cars, unless . . . . . such interruption was made for some necessary purpose . . . . . and without intent to interrupt continuous carriage, etc.

In a decision<sup>1</sup> rendered November 13, 1911, the Commission affirmatively defined the duties of the carriers with reference to a unified service:

The railroads of the country are called upon to so unite themselves that they will constitute one national system; they must establish through routes, keep these routes open and in operation, furnish all the necessary facilities for transportation, make reasonable and proper rules of practice as between themselves and the shippers, and as between each other.

#### WHY THERE IS A PROBLEM

If cars performed service only upon the road by which they are owned, there would be no problem of car service regulation in the sense in which it now exists. Between railways, as distinguished from those phases of the problem that arise between railways on the one hand and shippers and consignees on the other, the questions to be settled are predicated upon the ownership of the cars and their service upon other than the owning line. For this reason, the problem of car service is of chief importance in times of scarcity

<sup>1</sup> *Missouri & Illinois Coal Co. v. Illinois Central*, 22 I. C. C. 39.

of equipment to meet the requirements of shippers—"car shortage." Since "car shortage" does not always mean a deficiency of equipment upon all the railways considered as one transportation system, but frequently means only that cars wanted in the West are detained in the East, or *vice versa*, it is clear that some definite plan of distribution should be determined upon for securing the maximum of service from each car with the minimum of infringement upon the rights of ownership.

A fundamental principle has been laid down by the American Railway Association that every railroad is entitled to the use of cars equal to its ownership. As a financial proposition it would seem that a road is entitled either to the service of its owned cars, in which case it would be expected that their earnings would pay interest on the investment and a fair average yearly earning plus an amount sufficient to keep them in repair and to provide for depreciation; or, if the cars are in the service of or detained on other roads, to receive from the holding road compensation sufficient to cover these several items. This is, in its simple form, the end to be attained.

It would seem, perhaps, that the application of a fixed mileage or per diem charge for the service or detention of a car upon a foreign road should afford an equitable basis for settlement between roads in all cases. Both systems have been tried. Neither has proved wholly satisfactory. Up to 1902, except in a few experimental instances, the only basis upon which a road received payment for the use of its cars on a foreign road was at a rate varying in different years from one and one-half cents to three-fourths of a cent per mile. The main objection to the plan was that charges did not accrue when a car was not moving. It might conveniently be used as a warehouse while cars belonging to the road holding it were engaged in more profitable service. It is not necessary to mention the possibility of error in reporting mileage. However, it is much easier to check up the service of a car by days than by miles; and in 1902 the railways constituting the American Railway Association adopted per diem rules, by which the owning road is paid at a fixed daily rental while its cars are in possession of other roads, which with numerous changes in rate and conditions of application have since remained the basis of settlement of car service between railways.



## TWO VIEWS OF CAR SERVICE

With the development of the American railway system there have developed two schools of opinion as to the rights of railways to the possession and use of rolling stock. One rests on the basis that all car service rules that have ever been in force, except as they may have been locally modified within recent months to meet emergency conditions, recognize the fact that ownership of a car involves a right to its prompt return after it has performed its immediate function in the through service on which it had been forwarded. The second school of opinion assumes that the creation of through routes and joint rates has in effect created a pool of all cars used in such service, and that existing rules do not effectually regulate the service in the pool.

The Commission on Car Service of the American Railway Association, in formulating the two views above set forth, reported in March, 1916, that, whatever the solution of the problem, the efficiency of the rules in force had not been proved because of the lack of their enforcement. It then gave notice that, beginning on June 1, 1916, it would act not only as a mediator in disputed matters, as heretofore, but also would enforce the rules by the imposition of the penalties the rules authorized. The Commission found it had not sufficient authority to deal with the existing situation. The same emergency called for putting into effect certain changes in the rules and finally for the adoption of a revised code of rules, which in turn has been upset in their operation by the transportation necessities of a nation actively engaged in war.

Car equipment is conveniently considered in two general classes. Special equipment, for example, open cars, ordinarily involves an empty return movement. Under normal conditions its service seems to have been fairly regulated by the rules in force. "Legal tender" equipment, for example, box cars, may be and ordinarily is, loaded at any time at any point in any direction when there is traffic. The use of this class of equipment could not be effectively regulated under the rules formerly in force governing special equipment, because of a general recognition of the economic waste involved in returning an empty box car directly to its home road when by a diversion it could advantageously be loaded for movement in another direction. There has therefore been in effect for years a practically unregulated pool of this equipment. The result has been

that in times of unusual movement of traffic roads that had provided a seemingly adequate supply were unable to furnish cars, while roads with a less adequate supply were able to meet all demands because of their tenacity of hold upon foreign cars. The unregulated pool is therefore particularly unjust during times of car shortage to originating lines that have provided their quota, or more than their quota, of cars. It is likewise unjust to the public served by those lines which, without fault of their own, have been short of cars. In times of surplus, the unregulated pool is a source of injustice to distributing lines, because they are unable to get rid of the surplus equipment and are forced to pay per diem charges.

The situation and the remedy were summed up by the Commission on Car Service in 1913. The following paragraphs are extracted from its report of that date:

To be just to the railroads themselves and to the public generally, this pool should be regulated, to the end that there shall be secured to every road the use, when it needs them, of its quota of "legal tender" equipment (whether its own or the equivalent in foreign cars) or, in the alternative, compensation in money for the difference. Such regulation can be made effective only by the abandonment of the right to physical return to the owner of its own cars, and the substitution of the right to possession and use by each line of "legal tender" cars in kind equivalent to the cars by it owned and contributed to the pool.

The objections to recognizing a box car pool in the past have rested largely on the desire of roads which have supplied their quota of "legal tender" equipment, and have maintained it on high standards, to be assured of the use of cars measuring up to their standards. The answer is, that in practice existing car service rules have not secured this result so far as box cars are concerned.

It is true that the force of the objections to a box car pool is augmented by the inequalities in construction, in strength, equipment, capacity and cost of maintenance, of the box cars contributed to this irregular pool by the different roads. But it is also true that these inequalities are gradually disappearing. The adoption of a standard box car should remove the last objection to such a pool and would besides be attended with a considerable saving in cost of building.

While there was, as before stated, no fair opportunity to test completely the effect of enforcement of the car service rules formerly in force, the new system adopted since this country entered the war seems to have tended to demonstrate the efficiency of pooling in securing a maximum of service from each car and a minimum of de-

lay to the shipper in meeting requisitions. During the six months ending with September, 1917, the railways handled 14 per cent more freight than in the corresponding months of last year with substantially no increase in equipment. Though establishing a virtual pool of box cars, the new rules recognize the right of the owner to the prompt return of special equipment and this is doubtless for the good of the service as well as a recognition of ownership rights. The roads that have an adequate supply of special equipment—coal, refrigerator or automobile cars—doubtless have them because of the amount of traffic originating on their roads requiring such facilities. It would neither be fair to them nor in the interests of the highest efficiency, except in emergency, to use this equipment for purposes for which the ordinary box car would serve as well or better. Recently, however, a pool of the coal cars of the Eastern Railways has been temporarily established.

The principal features of the system developed by the Commission on Car Service under the authority conferred upon it as a war measure and acting in coöperation with the Interstate Commerce Commission have been the transfer of equipment from one section of the country to another where there was a greater need for it; and the success of its efforts to secure a greater efficiency of movement and loading of cars. Local shortages have been reduced by the transfer to needy localities of the required equipment collected in comparatively small lots from a large number of roads. More than 200,000 cars have been thus transferred. Until the usual increase in volume of traffic in the late fall and the inevitable slowing down of movement in the early days of winter, this system of handling by one authority had operated to reduce unfilled requisitions for cars from 148,000 cars on May 1, to 34,000 on September 1, though, as before stated, 14 per cent more traffic had been handled than during the corresponding months of the previous year. The increase in traffic handled was partly due, also, to the increased mileage per car per day, in which the efforts of the railways were greatly assisted by the coöperation of shippers, as they were also in the loading of cars more fully to capacity. So far as box cars are concerned, the present rules and the flexible system under which they are in force seem to afford the best means available for handling car service. The designation, from time to time, of commodities that may or may not be transported in open cars or special equip-

ment, has a tendency to minimize the economic waste involved in the usual empty return movement. Though designated as emergency measures, the rules and their application are based on efficiency of service.

The power conferred upon one body to regulate car supply as exigencies may require seems to provide for fulfilling the conditions of the economic phase of the question; and the right of appeal concerning the handling and use of equipment by a foreign road affords means for equitable financial adjustment. The slogan of the service is: "In all cases, keep the cars moving, and settle differences of opinion afterward."

As already intimated, the Interstate Commerce Commission, by act of Congress on May 29, 1917, was given express authority to regulate car service. The act defines the term "car service" as including "the movement, distribution, exchange, interchange, and return of cars used in the transportation of property." It requires every carrier to "establish, observe and enforce just and reasonable rules, regulations and practises with respect to car service," and gives the Commission authority to "suspend the operation of any rules, regulations or practises then established with respect to car service for such time as may be determined by the Commission, and also authority to make such direction with respect to car service . . . as in its opinion will best promote car service in the interest of the public and the commerce of the people."

In the administration of this law the Commission in July, 1917, organized a division of car service, which, under the reorganization of the Commission, has been changed to the Bureau of Car Service. It is evident, however, that the Commission believes that the railways through their own Commission on Car Service have been doing all they could to secure the greatest efficiency in the use of cars; for its Bureau of Car Service has thus far devoted itself chiefly to coöperating with the railways' Commission on Car Service. The Interstate Commerce Commission says in its annual report for 1917:

Where occasion requires, orders or directions will issue under the car service act and directly to the carrier or the carriers directly concerned. Subject to this fundamental principle, the Commission is availing itself, and will continue to avail itself, of coöperative effort on the part of the carriers' Commission on Car Service. . . . The present is peculiarly a time for the avoidance of unnecessary expense and duplication of work, and it has seemed to the Commission desirable

to utilize to the fullest extent all means for insuring maximum efficiency in the handling of cars.

That the spirit and manner in which the Commission has gone about its regulation of car service thus far have been effective in furthering the object it mentions—viz., “insuring maximum efficiency in the handling of cars”—is unquestionable. In periods of heavy traffic, such as the present when there are not enough cars to move all the freight, the great problems of car service, whether viewed from the standpoint of the managements of the railways, or that of the regulating authority, are, first, that of putting cars where they are most needed, and, second, that of securing the utmost service from each car. With equal information as to the conditions, the decision of the railways’ Commission on Car Service and that of the Interstate Commerce Commission’s Bureau of Car Service as to where cars are the most needed are pretty sure to be the same. Likewise, with the same information as to conditions, their decisions are pretty sure to be the same as to the best methods of securing the greatest efficiency in the utilization of cars. But it does not follow that government regulation of car service is superfluous. The railway man naturally looks at the problem from the railway standpoint. The representative of the government naturally looks at it from the standpoint of the public. Friendly coöperation between the representatives of the government and the officers of the railroads is desirable in order adequately to protect and promote the interests of both railways and public.

## REGULATION OF CAR SERVICE UNDER GOVERNMENT CONTROL OF OPERATION

BY JOHN J. ESCH

The existence of freight car shortage since March, 1916, and especially in the last two months, resulting in increased cost of living and widespread suffering to millions of our population, has compelled consideration of causes and methods of relief. There have been such shortages in the past, but they have been temporary, due largely to seasonal demands.

### CAR SHORTAGES SINCE 1907

Owing to the phenomenal prosperity during the year 1907, there were two periods of car shortage in that year, one during the mid-summer months when the maximum shortage reached 30,370 cars, the other during the last three months of the year when the shortage on December 24 reached 208,586 cars. During the following years of 1908 and the greater portion of 1909 there was business depression, and the number of idle cars reached on April 29, 1908, a maximum of 413,338 cars. During October and November of 1909 there was a small shortage. During 1911 there was no shortage. In the fall of 1912 the shortage reached a maximum on November 7 of 51,259 cars. During the latter part of October, 1913, there was another small shortage, with no shortage for 1914, the first year of the European war. The surplus of idle cars extended throughout the year 1915, with a maximum on April 1 of 327,084 cars. In 1916, however, owing to the tremendous demands upon the United States by the allied powers for munitions and supplies, there was a shortage on March 1 of 19,537 cars. Beginning with September 1, 1916, the car shortage increased until it attained 114,908 cars on November 1, with almost an equal number on December 1. On January 1, 1917 the car shortage had been reduced to about 62,000, but during that month it increased to over 100,000 cars. The shortage continued throughout the year and January of this year finds the situation more aggravated than at any other period of our history.

## CAR SUPPLY

For the last ten years about 135,000 freight cars on the average have been ordered and about 2,500,000 are now in use, but only about 80,000 were ordered during 1917, a material reduction notwithstanding the increased demands of traffic. "Prices, labor, material, deliveries and lack of funds have all contributed to keep the railroads out of the market." In the testimony presented to the Newlands Joint Committee on Interstate Commerce, representatives of the railroads declared that, owing to various causes and particularly to the regulatory control exercised not merely by the Interstate Commerce Commission but also by the several state commissions, it was impossible to secure sufficient funds to finance the roads, and, as a consequence, orders for new cars, locomotives and other rolling stock have not been given and the normal increased demand therefor on the part of some roads has not been met.

This testimony, taken together with the declaration made several years ago by Mr. James J. Hill that "the railroads of the country must invest over five billion dollars for enlargement of facilities upon roads now existing," leads to the conclusion that the present car shortage, to a considerable extent, is due to the underequipment of the roads. While it is true, as declared by the Supreme Court of the United States,<sup>1</sup> "That it would be unreasonable to undertake to require a carrier to provide facilities which would meet every condition that might arise," nevertheless, common carriers should provide sufficient equipment to take care of seasonal demands, for these are recurrent, can be anticipated with reasonable certainty, and should be provided against. All efficiently managed public utilities seek to take care of the peak load, and while this may mean keeping idle part of the equipment even for the greater portion of the time, the convenience of the public must be met.

## SOME CAUSES OF CAR SHORTAGE

Some of the causes for existing paralysis of transportation are the following:

1. Lack of adequate yard, trackage, warehouse and elevator facilities, especially in large manufacturing and producing centers and at terminal points at the seaboard.

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<sup>1</sup>*Houston & Texas Central R. R. v. Mayes*, 201 U. S. 321.



2. Lack of sufficient cars and motive power and inefficient operation.
3. The holding of cars by shippers and consignees for speculative purposes and the failure of consignees to unload promptly.
4. Lack of ocean carrying space.
5. The slow movement of freight and shortage of cars resulting from the practice of carriers in permitting reconsignment of cars and the extent to which shippers have availed themselves of reconsignment.

The car statistics furnished by the American Railway Association and the Interstate Commerce Commission show an unprecedented movement of cars from middle and western producing centers toward the Atlantic and Gulf port terminals for consignment abroad. Inadequate warehouse, elevator and other facilities at these terminals and lack of ocean carrying space has resulted in unprecedented congestion, thousands of cars being held on terminal tracks for days, weeks and even months, awaiting unloading. This congestion has prevented the prompt movement of unloaded cars westward to their home lines. Notwithstanding embargoes declared by western roads on eastbound shipments, the congestion has been only partially relieved.

#### CAR SERVICE LEGISLATION

Car service rules initiated by the carriers and voluntarily assented to have existed for several years. These rules regulated the exchange, interchange and return of cars, prescribed per diem charges and penalties for the violation of these rules. During periods of lax and normal freight movement rules were generally obeyed, but during periods of car shortage or congestion they were openly violated and penalties were not enforced because of fear of loss of traffic or retaliation. There was neither inclination nor power of enforcement.

During the latter part of 1916 the Interstate Commerce Commission made repeated efforts to get the American Railway Association, through its car service committee, to enforce its own rules, but failed notwithstanding the fact that the executives of some of the leading roads gave ready and effective support. The Commission, therefore, to relieve a situation growing constantly more desperate, after notice of hearing, issued an order on January 18, 1917, modifying the car service rules of the American Railway Association by requiring the carriers to return to their owners without diversion or misuse all foreign open-top cars and all railroad owned

or controlled refrigerator, heater, ventilator and insulated cars after being unloaded at destination, either loaded or empty, (a) direct if belonging to direct connections, (b) through the proper home route if belonging to other than direct connections, or in accordance with such rules as may be found reasonable and be prescribed, and to return all other foreign freight cars to their owners in accordance with car-service rules 1, 2, 3, and 4 of the American Railway Association, or to effect a relocation of such cars in accordance with such other rules as may be found reasonable and be prescribed.

This order was to have become effective April 15, 1917. War having been declared April 6; on April 11 the chief executive officers of the railroads met and resolved "That during the present war they will coördinate their operations in a continental railway system . . . to produce a maximum of national transportation efficiency" and created the organization necessary to effect this object. A car service committee was appointed and through it an earnest and partially successful effort was made to abate car shortage and congestion.

Owing to the fact that the Interstate Commerce Commission was not unanimous in its order and report of January 18, 1917, due to doubts as to its authority to prescribe general rules relative to interchange of cars, and the recommendation of the Commission that the "punch" of law was necessary to secure prompt and universal observance, Congress passed, and on May 29, 1917 the President approved the Car Service Act, defining "car service" as including "the movement, distribution, exchange, interchange and return of cars used in the transportation of property by any carrier subject to the Act to Regulate Commerce" and making it the duty of every such carrier "to establish, observe and enforce just and reasonable rules, regulations and practices with respect to car service." It was further provided that:

The commission shall, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service, including the classification of cars, compensation to be paid for the use of any car not owned by any such common carrier and the penalties or other sanctions for nonobservance of such rules.

Whenever the commission shall be of opinion that necessity exists for immediate action with respect to the supply or use of cars for transportation of property, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders,

without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the commission may determine, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the commission, and also authority to make such just and reasonable directions with respect to car service during such time as in its opinion will best promote car service in the interest of the public and the commerce of the people.

To carry out these broad powers effectively the Commission on July 9, 1917, created the Bureau of Car Service, through which it has undertaken to regulate this service throughout the United States in coöperation with the carriers' committee. Much good has already been accomplished and thousands of cars, irrespective of ownership, have been ordered from congested centers to the South and West where shortages existed. Car equipment has been pooled to expedite movement of coal to Lake Erie and Atlantic ports. The use of open-top cars has been denied to industries not essential in war production.

#### HOW CAR SERVICE CAN BE INCREASED

Car service can be increased through voluntary effort on the part of shippers and carriers and through regulation. Shippers can load cars 10 per cent above their stenciled carrying capacity; ship full instead of less than carloads lots; increase their storage room; install effective loading and unloading devices; order no more cars than needed; regulate their shipment as far as possible so as to avoid a glutted or congested terminal market; purchase coal and other supplies at times when traffic is slack; join with other shippers to make a full carload billed to a common destination; coöperate with carriers in establishing "sailing days."

The carriers can on their own motion expedite traffic movement by reducing the 15 per cent of locomotives ordinarily under repair to 10 per cent, thereby adding 3,325 to the number in service; increase the average per diem run of locomotives from 75 to 90 miles, thereby in effect adding 3,300 locomotives; reduce the number of cars now normally under repair from 6.5 per cent to 4 per cent and thereby release 64,000 cars for active service; increase the average per diem run of freight cars from 25 to 30 miles and thereby add 20 per cent or 515,000 cars to the existing equipment.

If these suggestions making for efficiency were even partially

carried out by shippers and carriers there would be no question of car shortage to solve at this time. While there has been an earnest and patriotic spirit manifested throughout the country to get the most use out of cars and locomotives, the compulsion of law and regulation made pursuant thereto has been found necessary.

#### REGULATED CAR SERVICE

The car service rules voluntarily adopted years ago by the carriers have, since the decision of the Interstate Commerce Commission of January 17, 1917, with the modification already referred to and under the Car Service Act, become laws capable of rigid enforcement. Existing rules approved by the Commission expedite traffic by allowing carriers to make a per diem charge per car for the use by another carrier with a maximum of \$1.25 per day; to make a charge for the diversion of a foreign car; to charge demurrage against shippers for detaining cars after the two days' free time allowed for unloading; to make a charge for the reconsignment privilege. The purpose of these charges is not to increase the revenues of the carriers but to hasten the return of cars to the owning road and the loading and unloading of cars. The more rapidly this is done the less cars will be required. Slow movement means congestion. Doubling the number of cars without hastening their movement will only add to the congestion.

In time of emergency the Commission can suspend, with or without notice, hearing or the making or filing of a report, the operation of any existing rules, regulations or practices with respect to car service and can make such just and reasonable directions as will best promote such service in the interest of the public and the commerce of the people. Only recently the demurrage rates were increased to a maximum of \$5 per day to lessen congestion. That high demurrage rates reduce by one-half the time consumed by shippers and consignees in loading and unloading, the experiences of California and Canada fully attest.

Congress could greatly increase car efficiency by standardizing cars, locomotives and other equipment. It has already standardized air brakes, automatic couplers, running boards, grab irons, ladders, sill steps and hand brakes in the interest of safety. Standardization of cars and equipment will result in efficiency as surely as it has already done in the manufacture of automobiles. There

are almost as many types of cars as there are railroad systems. As they pass from system to system they must be repaired from time to time while on lines remote from the owning line and where necessary spare parts are not obtainable: delay or an imperfect job results. In 1914 the railroads hauled one empty for every two loaded cars, due in large measure "to the design and construction of freight cars, which are for the greater part designed for special service, rendering them incapable of transporting a load except in one direction with a given commodity." Hopper coal cars are an example. With standardization, a type of car could be built that would be readily unloadable and fitted for a back haul. If unification of control is to result from the war, standardization may follow naturally and without legislation. It should come gradually, even as a result of legislation, and should apply only to new equipment.

#### REGULATION OF CAR SERVICE UNDER GOVERNMENT CONTROL

By proclamation of December 26, 1917, and under the Act of August 29, 1916, and the Resolution of April 6, 1917 declaring war against Germany, the President, through the Secretary of War, took possession and assumed control at twelve o'clock noon of December 28, 1917, "of each and every system of transportation and the appurtenances thereof located wholly or in part within the boundaries of the continental United States" consisting of railroads, etc. The proclamation gives to the Director General of Railroads appointed thereunder, power to issue orders, general or special, which shall be paramount, even though they override existing statutes and orders of the Interstate Commerce Commission or of state commissions.

Conceding the constitutionality of the grant of such power, it is evident that existing car service rules applicable in time of peace and under private ownership may be materially modified or even abrogated now that the roads are taken over, under the war power. Already the Director General has requested the Interstate Commerce Commission to change demurrage rates to a maximum of \$10 per car. In his first order issued December 29, he ordered all transportation systems to be operated as a national system, and "all terminals, ports, locomotives, rolling stock and other transportation facilities" to be fully utilized without regard to ownership. This

gives sanction to pooling of equipment, already practiced since last May as to freight cars, by the Railroads War Board.

The unification of the roads and surrender of control by their owners of all equipment will be the most salutary kind of revolution, a revolution which in large part will remain whether the roads are returned to the owners after the war or are controlled or owned by the government. Unified government control during this war will make the freight car as current as a dollar bill and be governed by the same economic law—go where it can be used. It will be as responsive to the needs of traffic as the Pullman car is to “the needs of the traveling public.” If this be true, then fewer car service rules will be necessary during the war.

Under order No. 1 of the Director General, designation of routes by shippers, heretofore authorized by law, are to be disregarded to promote speed and efficiency, cross hauling of freight and use of circuitous or long-haul routes are to be discontinued for the same purpose as are also traffic agreements between carriers. The result of this order will make it possible to discharge many men, eliminate advertising, maintenance of needless offices and effect other economies, but the greater cost of government management as a rule, may offset the savings, if past experience is any guide.

Before the proclamation of December 26, the railroads, in the interest of coal conservation and to release train crews and locomotives to haul freight and to relieve congestion, had abandoned many of their passenger trains, especially in eastern territory. In furtherance of this movement the Director General has ordered “so far as practicable, the annulment of passenger trains which interfere with giving necessary freight service.” Hundreds of passenger trains have already been taken off and a reduction of 20 per cent of through trains is contemplated. On the passenger trains still remaining, the use of private and observation cars has been abandoned and the use of sleeping and parlor cars on daylight runs, because of their weight and restricted seating capacity, are to be dispensed with. As passenger traffic is diminished, freight traffic can be increased and speeded up and the winning of the war made possible. To do this, who will not be willing to make some sacrifice?

## PHYSICAL NEEDS OF THE RAILWAYS UNDER GOVERNMENT CONTROL

BY JULIUS H. PARMELEE

Railway congestion may result from two wholly distinct forms of inadequacy, so far as concerns equipment; an inadequate supply of equipment, or inadequate utilization of equipment already in service. Having first ascertained which particular form of inadequacy is responsible for some specific experience in congestion, it becomes possible to determine what shall be the proper remedy. Government control over the American railway system, which became effective as the calendar year 1917 was drawing to a close, was made necessary partly by the congested condition of railway traffic, especially in the eastern section of the United States. To arrive at an estimate of the equipment and other facility needs of the railways while under government control, it is advisable briefly to review recent traffic history, to ascertain what steps led up to the President's proclamation taking over the railways, and finally to attempt a forecast of the probable traffic developments and physical needs of the near future.

For the sake of clearness and convenience, certain terms will be used throughout this article to convey certain specific meanings, as follows: "Period of government control" will be used to include such period after the declaration of peace as may be assigned (either by Congressional or Presidential action) for the retention of the lines. The term "railway facilities" throughout the article will denote the general railway plant, including roadway and track, bridges, stations and other structures, with the sole exception of equipment. "Equipment" will refer to the movable part of the plant, including locomotives and cars of all kinds. "Motive power" will refer to locomotives, while "rolling stock" will be used to apply to cars as distinguished from locomotives. Inasmuch as the discussion will center almost wholly on freight traffic problems, "rolling stock" will indicate freight cars unless otherwise specified.

The railways of the United States are under constant obligation not only to maintain their facilities and equipment, including



repairs, retirements, and ordinary replacements, but also to add such new facilities and new equipment each year as will enable them to keep up with the growth of traffic. There is a clear distinction between maintenance of the railway plant at normal level, and such improvements and betterments as represent additions to the plant. The cost of maintenance is an operating expense, met from current revenues and chargeable to "maintenance of way and structures" and "maintenance of equipment" accounts. The cost of additions is a capital charge, whether the new facilities and equipment are paid for out of surplus earnings or are financed by the sale of securities. The distinction is not only one of accounting, but also reflects the purposes for which maintenance and additions are carried out. Maintenance work is designed to keep a railway in condition to meet the normal traffic demands that, judging by past records, will be made upon it; new additions are made to care for the added traffic that is expected to develop from the growing needs of a community, or to promote economy and efficiency in operation. These distinctions should be borne clearly in mind, as they have a definite bearing on any discussion of physical railway needs.

#### GROWTH OF TRAFFIC, EQUIPMENT AND FACILITIES TO 1917

Growth of railway traffic has been astonishingly great in recent years. From 1908 to 1915 the annual increase in tons of revenue and non-revenue freight carried one mile, or ton-miles, was less than 4 per cent, while the number of passengers carried one mile, or passenger-miles, increased less than 2 per cent per year. Since 1915, however, both forms of traffic have grown by leaps and bounds. The calendar year 1916 showed an increase in freight traffic over the fiscal year 1915 (ended June 30) of about a third, the increase being from a little over 300 billion ton-miles to about 400 billion ton-miles. This was the growth of a period of eighteen months. The calendar year 1917 showed an increase over 1916 of not less than 10 per cent, which would place the 1917 traffic in the neighborhood of 450 billion ton-miles. For the thirty-month period from July 1, 1915, to December 31, 1917, this represents an increase from about 300 billion to 450 billion ton-miles, or 50 per cent. Similarly, passenger-miles increased from 32 billion in the fiscal year 1915 to 35 billion in the calendar year 1916, an increase of approximately 10 per cent in eighteen months. The passenger

business in 1917, was unusually heavy, partly owing to the demands of war travel, and partly to heavy troop movements. While exact figures are not as yet available regarding the passenger traffic of 1917, it was approximately 15 per cent greater than in 1916, which would make it not less than 40 billion passenger-miles. This is an increase for the period from 32 billion to 40 billion passenger-miles, or about 25 per cent.

We have thus presented an extraordinary picture of traffic increases as between the annual periods ended July 1, 1915, and December 31, 1917, as follows:

Ton-miles, from 300 billion to 450 billion a year, or 50 per cent.  
Passenger-miles, from 32 billion to 40 billion a year, or 25 per cent.

The significance of these astounding figures will be made apparent in our discussion of physical needs.

Railway mileage has increased but slowly during the past few years, the average annual increase being about a thousand miles. This refers to miles of line, or first main track. Increase in additional trackage, such as second, third and fourth tracks, yard tracks, and sidings, constructed to enable railways to handle a more intensive traffic, has been more rapid than in miles of line. Additional trackage has been growing recently at the rate of nearly 2,500 miles a year. Applying these annual rates to the thirty-month period from July 1, 1915, to December 31, 1917, the best available figures make it appear that miles of line increased about 2,500 miles, and additional tracks about 6,000 miles. While this represents a considerable amount of new construction, it is an increase in line mileage of only 1 per cent, and in additional track mileage of about 5 per cent. Recollection that freight traffic increased 50 per cent during the same period and passenger traffic 25 per cent will lead to a realization of the additional traffic burden thrown on each mile of line in 1917 as compared with 1915. In fact, traffic density as measured by ton-miles and passenger-miles per mile of line increased 48 per cent in the case of freight traffic and 24 per cent in the case of passenger traffic. This burden fell primarily on the railway staff, secondarily on the terminal facilities, motive power, and rolling stock, freight and passenger, and lastly on the other facilities included in the railway plant.

While the growth of traffic was throwing this greatly increased

burden onto the railways, was there a corresponding increase in the amount of equipment in service and available to handle the traffic? Detailed figures are not available to December 31, 1917, but it is possible to approximate an answer to this query. During the eighteen months from July 1, 1915, to December 31, 1916, the increase in number of steam locomotives in railway service was less than 2 per cent, the increase in freight cars was considerably less than 1 per cent, and in passenger cars approximately 1 per cent. The year 1917 offers a most complex record as to the construction and distribution of new equipment, and as will be shown a little later, the demands of our allies and of our own armies in France drew off much of the production originally intended for the American railways. It probably does not overstate the case to say that as a whole 1917 did not add over 1 per cent to the supply either of locomotives, or of freight and passenger cars, which would make the number in service on December 31, 1917, greater than on July 1, 1915, by about 3 per cent in the case of locomotives and about 2 per cent in the case of cars. Thus with an added 2 or 3 per cent of equipment, and an additional 1 to 5 per cent of trackage, the railways in 1917 were handling 25 to 50 per cent more traffic than in 1915!<sup>1</sup>

The answer to what seems at first sight a most puzzling riddle may be found partly in the fact that 1915 was a year of low traffic, partly in the monthly freight efficiency reports issued by the Railroads' War Board beginning with April, 1917. Such great increases in traffic as have just been indicated could not have been handled merely by taking up the slack of 1915, but must have been met either by greatly increasing railway facilities or by utilizing existing facilities to a much greater degree than formerly. We have seen that mileage and equipment showed very moderate rates of growth from 1915 to 1917, while traffic was growing by tremendous leaps; the first alternative, that of increased facilities, is therefore untenable. That the second alternative must more nearly approximate the correct solution is confirmed by the War Board efficiency reports and by the testimony of close students of the period. During the first eight months of the War Board's operations (April to November

<sup>1</sup> Owing to the continually increasing size and capacity of equipment, and to improvements in other facilities, railway facilities do not need to increase proportionally so fast as traffic. My emphasis is merely on the very wide margin here shown between the different rates of increase.

inclusive) the average load per loaded car increased from 24.8 tons in 1916 to 27.1 tons in 1917, or 9.3 per cent; the number of tons hauled per train increased from 626 tons to 672 tons, or 7.3 per cent; finally, the daily mileage of locomotives increased 1.9 per cent. This resulted in a saving of 32 million train-miles and 1,350 million car-miles. That is, even with heavier loading, which might logically have tended to slow up the movement of trains over the tracks, the drive for efficiency inaugurated by the Railroads' War Board had its result in greater carloads joined together in heavier trains, traveling longer distances each day than formerly. Combining these different factors into one, each freight locomotive during the seven-month period of 1917 hauled a greater amount of traffic, measured in terms of ton-miles, by 11.1 per cent, than during the corresponding period of 1916, while similarly each freight car carried a greater traffic by 9.9 per cent. Available statistics on passenger traffic efficiency are far less definite and complete than those for the freight traffic, but with the same equipment limitations as in the case of freight, on the one hand, and similar increases in passenger traffic on the other hand, the use of each locomotive and car in the passenger service must also have increased greatly.

The comparisons of the preceding paragraph are all of 1917 with 1916, and portray considerable gains in efficiency in 1917. We have already seen that the year 1916 showed great traffic increases as compared with 1915, and with but slight additions to equipment and other facilities. It seems safe to assume, therefore, that operating efficiency in 1916 was at a higher level than in 1915, and this in spite of the fact that 1915 was a year of business depression, when railway facilities were not being utilized to the fullest. If the efficiency of 1916 was greater than that of 1915, while the efficiency of 1917 was considerably greater than in 1916, it follows that the two-year gain in efficiency was more than considerable.

The foregoing review of growth of traffic, of equipment, and of facilities to 1917 brings us to the prospects and needs of the period of government control. At the outset we are confronted with the annoying fact that difficult as it may be to picture the immediate past and grasp the present, it is almost impossible to outline the future, even in the most sketchy fashion. What will be the period of the war, how will its needs and demands shape themselves, what new alignments of men and materials will be necessary before the

clarion of peace is sounded? These and many similar queries call for answer before the attempt be made to prophesy the future needs of the railways. Yet some idea of the railway future is necessary, if our transportation facilities are to be kept up to their mark and do their share toward the prosecution of the war and toward the later general reconstruction.

#### EQUIPMENT PROBLEMS IN 1917

Before turning to the future, it may not be unfruitful to glance for a moment at the equipment problems confronting the American railways in 1917. The annual output of locomotives for domestic use has not been below 2,000 for many years, and has risen much higher in some years. In 1916 it was slightly over 4,000. Anything short of 2,500 would appear insufficient to take care of replacement and renewal needs. It is clear, of course, that a certain amount of construction each year serves merely to fill up such gaps in equipment in service as are due to loss by fire or wreck, conignment to the scrap heap because no longer fit for service, and obsolescence. Replacements and renewals are for the most part charged to operating expenses. Over and above replacement demands are the demands for entirely new equipment to meet the needs of increasing traffic; and the cost of such equipment is a capital charge. In 1917 the number of locomotives built for domestic use was only 2,600, or less than half the total output for the year, the balance being allotted to the French and Russian governments and to the American army in France. These 2,600 engines for domestic order hardly more than met the normal replacement needs of the railways. With freight and passenger traffic in 1917 much higher than the 1916 and 1915 levels, and with locomotive construction hardly sufficient to meet replacement needs, it is clear that what motive power was in service in 1917 must have been driven at top speed to accomplish the necessary results.

The situation with regard to freight and passenger cars was not so bad, although it was serious enough. The normal replacement need for freight cars is probably in the neighborhood of 100,000 cars a year. In 1916, construction for domestic use amounted to 135,000 cars, while in 1917 it dropped slightly below 120,000. That is, the domestic supply of freight cars in 1916 and 1917 added about 55,000 cars above replacement needs to equipment already in service, or

something over 2 per cent. Passenger car construction for domestic needs averages normally not less than 2,500 cars. In 1916 it was 1,800 and in 1917 about 2,000, or below normal. Production of freight cars for foreign order in 1917 was about 32,000, while passenger car construction for foreign use was negligible.

The statistics of the foregoing paragraph may be summarized in the statement that with a freight and passenger traffic running much greater than in 1915, the supply of new freight cars for domestic use was only slightly greater than sufficient for replacement needs, certainly hardly equal to providing for the abnormal traffic requirements of 1917, while the supply of new locomotives and passenger cars was not only below normal in 1917, but was probably insufficient to meet normal requirements for replacement.

With this review of 1917 conditions in mind, and having before us also the growth of traffic and of equipment and other facilities from 1915 to 1917, we may now turn to the prospects for the period of government control. Such a survey of future prospects must rest partly on traffic possibilities and partly on the possibility of keeping up the supply of new equipment, rails, bridges, ballast, ties and countless other materials that are included under the head of facilities.

#### TRAFFIC POSSIBILITIES DURING PERIOD OF GOVERNMENT CONTROL

First, as to traffic possibilities. In the matter of passenger service, it may be assumed that under government control of transportation facilities and operation the needs of passenger travel will be very largely subordinated to the movement of absolutely necessary war materials and other necessary freight, food and fuel. In Great Britain every effort has been made since the outbreak of war to reduce passenger travel upon the railways. To effect reductions low rates have been cancelled, special service has been cut down or abolished, free baggage and other privileges have been largely withdrawn, and every effort made to induce the general public to refrain from unnecessary travel. When these various devices did not produce the fullest results desired, the Railway Executive Committee in 1917 took the radical step of increasing passenger fares 50 per cent by a stroke of the pen, the avowed object of the move being to decrease travel rather than to increase revenues. Still other restrictions are in prospect. Whatever steps may be

taken in the United States to stem the tide of passenger travel during the war, it is safe to predict that serious and earnest attempts will be made to keep it down to a reasonable level, if possible, and that the demands of the traveling public for such facilities as new passenger stations and other conveniences, and for passenger equipment (especially for special equipment such as Pullman, drawing, observation, restaurant cars, and the like) will not be met until the freight service has been taken care of, and that means not at all during the progress of the war. The history of the principal warring nations has given us a striking picture of official effort to keep down passenger travel, and we may reasonably assume that the United States will soon be a figure in the same picture. In fact, efforts have already been made, both under private management and government control, to make travel less attractive by providing less trains and fewer special services and conveniences per train. Passenger traffic may be kept stationary, or may even be reduced if that proves practicable.

The problem of freight transportation is wholly different. If the United States is to be a significant factor in winning the war, her transportation system must be tuned up to highest pitch, both to meet the normal and legitimate demands of our economic activities, to supply vital munitions and supplies to our troops across the seas, and to assist our allies with the essential food and other supplies that will hold up their hands in the final stages of the conflict. Freight traffic will probably continue at its maximum, then, during the remainder of the war period. The maximum to date was the freight record of 1917, which was in the neighborhood of 450 billion ton-miles. In fact, the war demands for transportation in 1918 and later years may go above this maximum of 450 billion ton-miles. True, the traffic will be different in many respects, will be in different directions, and will be made up of different articles and in different proportions from that of normal times, but that the speeding up of our war machine will lay demands on our transportation system far above any yet made seems almost beyond question. Let us assume at the beginning, therefore, that traffic demands during the period of government control will be more likely to increase than to decrease.



## GOVERNMENT UTILIZATION OF EQUIPMENT AND FACILITIES

How will these demands be met? By utilizing the existing railway plant to fuller capacity than ever before, or by increasing the plant? Probably both methods will be called into play. In the first place, government unification should lead to many improvements in the utilization and coördination of railway facilities. The President's address to Congress on January 4, 1918, stated this clearly in the following words:

It had become unmistakably plain that only under government administration can the entire equipment of the several systems of transportation be fully and unreservedly thrown into a common service without injurious discrimination against particular properties. Only under government administration can an absolutely unrestricted and unembarrassed common use be made of all tracks, terminals, terminal facilities and equipment of every kind. Only under that authority can new terminals be constructed and developed without regard to the requirements or limitations of particular roads. But under government administration all these things will be possible,—not instantly, but as fast as practical difficulties, which cannot be merely conjured away, give way before the new management.

The routing privileges heretofore held by the shipper, under the provisions of the Interstate Commerce Act, can be withdrawn by the Director General of Railroads if he deems desirable, and a hampering element in freight transportation be removed thereby. As a matter of fact, the congested situation in the east has already compelled the waiving of this privilege in many instances. At first sight it may not appear clear why the routing privilege hampered traffic, but second thought will bring into relief the fact that congestion could not be relieved at terminal or junction points, or at gateways into the east from west and south, so long as shippers were directing that certain freight shipments should move into or through those very terminals, junctions, or gateways. It actually happened during the summer of 1917 that the Railroads' War Board pleaded with large shippers of certain food supplies to relieve congestion at the Pittsburgh gateway by diverting their traffic through the south-east. The War Board could not accomplish this because the law tied their hands; the food administration took up the matter and the diversion was accomplished. Under government control freight can be routed with little reference to the preferences of the shipper; the chief consideration will be to move freight, and to move it quickly.

Again, government control can unify the supply and distribution of motive power and equipment, making of it virtually a national pool. The Railroads' War Board in 1917 pooled several kinds of freight car equipment by meeting demands for cars from whatever source happened to be available. Motive power was also pooled to a limited degree in December. Congestion in the Pittsburgh district grew so serious that 100 western freight locomotives were commandeered by the War Board and placed in eastern service, while to relieve the coal situation in the West Virginia district 25 locomotives were drawn from southeastern roads and turned over to two roads operating in that district. These efforts, excellently designed as they were, could be but partial solutions of the problem of congestion. The government can organize an extensive pool of motive power and of freight equipment without delay, friction, or any of the hampering restrictions that may accompany deals between separate roads. In fact a step in this direction was taken by Director General McAdoo in January, when he directed American locomotive builders to deliver to specific eastern lines all locomotives completed during the months of January, February and March for railway order, regardless of the roads for which they were under construction. It was estimated that this would release 700 locomotives for almost immediate service in the east during the three-month period, only a part of which had actually been ordered by eastern roads.

Further, the Railroads' War Board pooled certain forms of freight traffic, notably the lake coal pool of June, the tide-water coal pool of July, and also iron ore pools at the lake ports. By agreement, shippers of coal and iron ore patriotically waived their individual identities for the time being and delivered their products at a common point or points, to be drawn against for whatever purpose seemed most needful. Shippers of other goods also threw their goods into what were virtually common pools of their kind of product. But while the War Board met with considerable success in the pooling of traffic, they were prohibited by law from pooling freight revenues, and this prohibition was a bar to the fullest success of their efforts. Roads that lost traffic in 1917 through pooling operations lost revenue as well, and while losses were incurred without protest by many roads, the inequity of the situation spelled failure for any widespread extension of pooling measures. The

Director General is hampered by no anti-pooling or anti-trust laws, and the guarantee to each road of its normal net income makes it, for the time being, a matter of little moment how, in what directions, and by what routes traffic is collected, forwarded, pooled, or otherwise disposed of.

Thus it becomes clear why the government, as the controller of the railway system, will be subject to none of the hampering restrictions which undoubtedly had their share in bringing about the events that resulted in the President's proclamation.

Not only can cars be pooled and distributed without restriction, but all the related and complex questions of car supply, of demurrage charges, of free time for loading and unloading, and other perplexing problems underlying car service, can be solved at one stroke by the government. Several steps have already been taken in that direction, as in the rules fixing demurrage rates on a sliding scale that become almost prohibitive after a week, and instituting definite restrictions as to free time for loading and unloading. The Director General may conceivably travel farther along the same line before the period of government control is terminated. Here, too, the Railroads' War Board through its important sub-committee, the Commission on Car Service, had attempted a solution of the problem with definite results. Freight congestion is largely a matter of inadequate car supply and uneven car distribution as between localities. The War Board's reports of total car shortage throughout the United States in 1917 throw light on the results attained by the Board through the Car Service Commission. From May 1 the total car shortage, that is, cars for which there was demand but no immediately available supply, fell rapidly to September 1, then reacted quickly to a high level on November 1. This reaction was partly seasonal, but probably represented also in part the rising tide of traffic offered.

The Railroads' War Board met also with considerable co-operation from shippers in their campaign to increase car loading. Rules governing minimum weights were modified by the roads, and many shippers agreed to sink the identity of their goods and combine similar products from different factories in common carloads. The result of this campaign is reflected in the increased carload averages of 1917 already referred to, amounting to nearly 10 per cent.

As to making the present supply of motive power and rolling stock available, then, the government will have virtually a free hand. The only hampering factor may be found in the fact that during 1917 the pressure of traffic, the shortage of labor, and the high cost of materials kept some roads from maintaining their equipment at the highest level of repair. This applies more specifically to motive power than to cars, and also in some degree to track maintenance.

The question of the adequacy of maintenance work is extremely difficult of solution. That the maintenance level in 1917 was not sufficient to the heavy traffic of that year may be admitted, but the reasons are a matter of some discussion. The cost of transportation increased 28.9 per cent during the first eleven months of 1917, while maintenance costs increased only 11.1 per cent, maintenance of equipment increasing 14.9 per cent and maintenance of way 6.6 per cent. This comparison is only suggestive, inasmuch as labor and materials enter into transportation and into maintenance in different proportions, yet it has a certain significance. It seems reasonable to consider the scarcity of labor, the high cost of materials, and the terrific pressure of war traffic which forced equipment to remain in service when it might ordinarily have been shopped, as the predominant causes for the relatively low maintenance of 1917. Railway shop labor was unusually mobile, owing to the competition of higher wages in munitions and other factories, and flowed into other industries with appalling ease, some railway shops turning over their forces two or three times during the year. This shortage of shop labor had an especially disastrous effect on the maintenance of equipment.

This disposes of the problem of inadequate utilization of equipment and brings us to the more difficult problem of the supply of equipment and other facilities, and necessary additions thereto. This problem introduces factors so complex and so vast that we can hardly attempt more than a brief enumeration of the factors and a statement of their general relationship to the question as a whole.

#### NEEDED EQUIPMENT AND FACILITIES UNDER GOVERNMENT CONTROL

To begin with, it must be clear that a living organism must either grow or degenerate. The transportation system is a part of the economic body of a people; it furnishes the economic arteries and pumps goods through those arteries. It must live and grow, or the

people's progress is doomed. We have seen that the past two and a half years have added little to the facilities of the roads, compared with the great increase in traffic. We have also seen that traffic will continue at a high level, perhaps higher than in 1917, and that the general condition of railway equipment and facilities at the beginning of 1918 is on some roads below par. These various realizations lead necessarily to the conclusion that new facilities and new equipment must be added under government control and in considerable amounts, if the railways are to perform their full share in the war.

In the earlier analysis of maintenance and additions, we saw that the former is chargeable to operating expenses, while the latter is a capital item that may be charged to surplus or provided for by means of new securities. As to railway maintenance work during the period of government control, that should proceed on a fully adequate level. This evident fact is recognized in the legislation now before Congress (which may become law before this is in print), which specifically provides for adequate maintenance and depreciation charges.<sup>2</sup> These should take care of war time requirements for repairs to equipment and facilities, for replacements, and for ordinary renewals. As expenditures of this nature are chargeable to operating expense, they will be guaranteed by the federal government during the period of control. Under these conditions, there should be no reason why the railways cannot keep up their plant to a fair degree of efficiency, barring only the war time exigencies of the supply of labor and of materials.

Railways never stop improvement work. Even under the uncertain financial and operating conditions of the last six months of 1917, the roads invested about \$200,000,000 in their properties, in large measure for the purpose of bringing their plant nearer the point of most efficient service. We may assume that during the period of government control the railways will so far as possible continue their custom of putting a portion of net earnings back into

<sup>2</sup> The language of the proposed Senate bill is as follows: "The President is further authorized to make in such agreement all reasonable provisions for the maintenance, repair, and renewals of the property for the depreciation thereof and for the creation of necessary reserve funds in connection therewith, to the end that at the termination of federal control the property shall be returned to each carrier in substantially as good repair and in substantially as complete equipment as at the beginning of federal control."

their plant, and will invest part of the net operating income (the so-called "standard return" of the law) guaranteed them by the government, in their properties in the shape of additions to facilities and equipment. The standard return as provided in the proposed bill amounts to something over \$900,000,000 a year. There should be added to this an amount of from \$50,000,000 to \$100,000,000 of net income from other sources. Out of the sum of the standard return and this net income the roads must take care of war taxes, interest and other fixed charges, and must meet dividend requirements. A large part of what balance is left will undoubtedly be invested in their plant, in the form of additions and betterments. Many of the weaker roads will have no balance for improvements, so that improvements out of the standard returns will necessarily represent amounts expended by the more prosperous roads out of their own balances on their own properties. Even for strong roads, the money available for additions and betterments out of the standard return will almost certainly be insufficient for necessary additions to the plant during the period of control, and this will be the case, *a fortiori*, with the roads that have no balance. In other words, the weaker roads certainly, and the stronger roads probably, will be forced to secure new capital for needed additions to their plants.

While there is no absolute distinction between improvement work financed by sale of securities and that paid for from net earnings, yet improvements charged to earnings are usually of the kind represented by increasing the weight of rail, the size of cars, the weight and tractive power of locomotives, and adding more ballast, more ties, and the like—in short, an aggregate of many small improvements; while improvements financed by security issues are usually large-scale additions to the plant, such as the construction of new lines or branches, the purchase at one time of a hundred new locomotives or a thousand new cars, or the construction of a completely new terminal.

If the foregoing reasoning is correct it follows that considerable new capital must be raised during the period of government control, and that such new capital must be expended upon the many additional facilities that the demands of war traffic and general war conditions will call for. Briefly summarized, such facilities will comprise principally the following:

Terminal facilities. These are needed as much as any other kind of facility.

Additional tracks, especially in terminal yards and at concentration points.

Additional lines into port terminals as developed, to new shipbuilding plants demanded by war needs, and to training camps, embarkation stations, quartermaster depots, and the like. Considerable work of this nature was carried on in 1917; it will be needed in much greater degree as the participation of the United States in the war grows greater.

Improved shopping and other working facilities. These are needed to keep equipment in order, to conserve man-power, and to enable more work to be produced by each man.

Increased motive power. Even with the locomotives of the American railways in one gigantic pool, and with the diversion of passenger locomotives into freight service, the demands will probably exceed the available supply. High-powered locomotives capable of hauling heavy freight trains will be especially needed, and it will be absolutely essential to add engines of this type to railway equipment.

There must also be a considerable addition to the freight car equipment. The roads will need a considerable number of coal and ore cars, also other freight cars of many kinds.

What will be the aggregate amount and total cost of new facilities and equipment needed by the railways during each year of government control, whether paid for out of standard return or from new capital issues? Clearly any attempt at estimating either the physical units needed, or their aggregate cost, will be but an approximation. Yet we may assume that capital must be forthcoming during each year of government control for 3,000 new miles of track of all kinds—say 500 miles of main line, and 2,500 miles of additional tracks, yard tracks and sidings—and that the demand for new equipment over and above renewal needs will amount to 2,000 locomotives and 50,000 freight cars. The cost of these facilities, and of other facilities that may be required, may be estimated roughly as follows:

500 miles of line @ \$35,000 .....	\$17,500,000
2,500 miles of other track @ \$25,000 .....	62,500,000
2,000 locomotives @ \$75,000 .....	150,000,000
50,000 freight cars @ \$2,500 .....	125,000,000
Other facilities, not less than .....	200,000,000
Total .....	<hr/> \$555,000,000



These rough estimates are all conservatively made, with due regard to current prices and prevailing labor conditions and wages. For example, in arriving at \$25,000 as the average cost of laying a mile of track, no account was taken of the original cost of the land, but merely of the cost of rails, ties, ballast, and track fastenings, the cost of grading and filling, and a very moderate estimate of the labor cost of laying the rail, as follows:

Rail (100 lbs. per yd.) 157 tons @ \$40.....	\$6,280
Ballast (2 ft. deep, 7 ft. wide) 2,740 cu. yds. @ \$1.....	2,740
Ties, 2,000 @ \$1.00.....	2,000
Track fastenings (frogs, switch fastenings, tie plates, bolts, etc.).....	2,000
Grading, filling, etc.....	6,000
Labor cost per mile.....	5,980
Total.....	<hr/> \$25,000

Miles of line have been estimated at \$35,000 per mile, to allow for cost of land and for buildings that may need to be erected. This is a very low average.

In brief, the best attempt at a guess—for it is nothing more at present—leads to the opinion that the railways of the United States, while under the control of the federal government, will not only be under the necessity of adequately maintaining their equipment and other facilities, including all repairs, renewals, and replacements, with proper depreciation charges, but will also put into their plant each year an amount certainly not less than \$500,000,000—probably more—that will represent additions and improvements to plant. Maintenance charges will be cleared through the operating expense accounts. The cost of additions and betterments must be borne in large part by the issuance of new securities. How these securities shall be financed is no concern of the present inquiry; what does concern us is that for capital account the railways must expend not less than half a billion a year on their properties during the period of government control. This amount is if anything moderate and conservative; only a small part of it can come out of the standard return, while a considerable part must be financed in the open market. It would seem to follow as a logical conclusion that the greater the standard return allowed to the railways, the smaller the amount for which special financing arrangements must be made by the Director General of Railroads. The railways may safely be

expected to invest the largest possible proportion of their standard return in their properties, while the Director General will certainly keep the aggregate of railroad financing at a minimum consistent with efficient operation. Whatever the results of these various efforts, it seems reasonable to conclude that the aggregate amount of capital needed each year will more likely be above \$500,000,000 than below that figure, and furthermore, that a large proportion of this annual amount will call for the issue of new securities.

NOTE.—Since this article went to press, the Director General of Railroads has issued blank forms to all railways, requesting that they be filled out with statistics as to the needs of the roads for new equipment, for additions and betterments, and for new extensions of road or branches. The returns made on these forms, when compiled, will throw a flood of light on the problem which I have attempted to picture in its broad outlines.—J. H. P.

## **ADJUSTMENT OF LABOR'S DEMANDS DURING FEDERAL CONTROL OF RAILROAD OPERATION**

**By GLENN E. PLUMB**

### **LEGAL STATUS OF RAILROAD PROPERTIES**

Railroads are public highways, so declared by the various state constitutions, and so held by the Supreme Court from the beginning of railroad history. They are in the nature of things public highways to be used in a particular manner, but highways devoted exclusively to public use, and over which the public have an indefeasible right of transportation. Under the terms and conditions prescribed by law the operation of railroads as public highways is purely a function of government, the exercise of which has been delegated by the various states to the corporations which they have created for that particular exclusive purpose. All of the property which railroad corporations have been permitted to acquire under the terms of their charters is held subject to the perpetual right of passage retained by the public. Public highways are matters purely of public concern, in which no private property interest can exist, except such interests as have been conferred by legislative enactment. The extent of these private interests must be determined from the terms of the grants under which they have their existence. All interests in public highways, which are not included within the grant which the legislature has made, remain in the public. All of the functions which railroad corporations exercise under their charters are delegated governmental functions.

There are naturally three separate and distinct interests in railroad properties: the interests of labor, the interests of capital, and the interests which the public have retained in this property which has been acquired solely for public use. Labor's interests are inherent, not based on grant or legislative enactment, save for those rights which are protected by remedial legislation. Labor has the right to demand, and the public interests require that it shall obtain, sufficient remuneration to attract men of the required intelligence to offer their employment in the service, and to provide

sufficient inducement to retain these men in the public service. The interests of capital are protected by contract and based on legislative and charter grants. Under such grants capital is entitled to receive a fair return for its use in the public service, and this fair return must be so construed as to afford sufficient inducement to attract capital to the public service and to retain it permanently in that service. The public interest requires that the tax levied in the shape of tolls and charges shall produce an amount sufficient to satisfy the interest of labor and provide the agreed returns on capital, in addition to protecting the integrity of the investment through proper maintenance and renewal charges. The public interest is entitled to protection against the imposition of tolls and charges in excess of the rates necessary to produce an income which shall satisfy the requirements of labor and of capital.

#### EXTENT OF LABOR'S INTERESTS IN RAILROAD PROPERTIES

I wish to outline, briefly, the extent of labor's interests in railroad properties: *first*, as to the number of citizens directly affected by such interests; and *second*, the amount and importance of the financial interests involved.

There are approximately 1,700,000 men employed in railroad operation within the United States. Allowing three dependents to each worker, 6,800,000 are directly dependent upon railroad operation for their livelihood. This is about one-sixteenth of the population of the continental United States. This proportion of the total population is therefore more directly interested in the solution of railway problems than the rest of the entire citizenry of the country.

The public paid in wages and salary to the 1,700,000 men who operated these railways, in the year 1916, the sum of \$1,500,000,000. For the use of capital in the same year there was paid, in dividends and interest, the sum of \$827,000,000. The owners of the money which was devoted to railway service of the public have capitalized their investment at \$21,000,000,000. If the return paid to labor were capitalized on the same basis, it would represent a labor investment of upwards of \$37,000,000,000. This actual labor investment is nearly double the amount for which the actual money investment has been capitalized. The capitalization of the money investment, however, does not actually represent the number of

dollars employed in the public service, but represents merely the par value of the securities which have been issued against an actual investment of dollars which is very much less in amount than that which the face or par value of the securities purports to represent.

The number of dollars actually employed in the service of the public in railroad operation, and entitled by reason of that service to receive a return in interest or dividends, corresponds, in principle, to the number of men employed in this service, and entitled to receive compensation in the form of wages or salaries. It is just as much a fraud against the public to pad the dollar payroll in such a manner as to require an increased exercise of the state's delegated power of taxation, in order to pay a return on such a padded capital payroll, as it would be to pad the wage payroll.

In the present situation there is no padding of payrolls for the advantage of labor. No fictitious names appear on such payrolls. No amounts are paid out for services which are not actually rendered. The number of men employed, the hours, days, or months of their service, are definitely ascertained. The amounts which they receive for the services actually rendered are known with great certainty. The public are not defrauded by the payment of wages for fictitious employes who render no service.

It is not so with capital. We do not know the number of dollars actually invested and which at this time are employed in the service of the public. We only know that the capital payroll purports to represent \$21,000,000,000, which are alleged to be serving the public, but it is admitted that \$4,000,000,000 of this amount is duplicate capitalization, and it is also admitted that the remaining \$17,000,000,000 of securities do not in all cases represent the actual number of dollars devoted to the public service,—as in the Alton case. Its capitalization is \$121,000,000, yet Mr. Harriman admitted, when on the stand before the Interstate Commerce Commission, that \$60,000,000 of these securities outstanding did not represent a single dollar of property or investment. The most conservative defender of railroad securities will not attempt to defend the Alton capitalization, and it is severely condemned by railroad financiers themselves, but it is so condemned only because the facts in the case have become established. The record is known, and while not all railroads have practiced the same frauds, to the same extent, few railroads are free from this taint in their financiering;

and many railroads equal, or exceed, in the extent of the frauds which they have perpetrated, the known facts in the Alton case.

Labor is capital. The engineer who commands and is paid a wage of \$1,200 per year performs a service exactly equivalent in importance to the public as does the investment of \$20,000 for which the public pays a return of 6 per cent per year. The capital investment and the labor investment are identical in worth and importance. The one is entitled to as much protection as the other. Neither is entitled to any advantage or privilege denied to the other, but so long as a capital investment of \$20,000 is permitted to masquerade as an investment of twice that amount, and to receive for its services a double wage, by means of fictitious bookkeeping, capital does receive an advantage which is denied to labor, and that advantage must represent a corresponding loss or burden which either labor, the public, or both, must bear.

Heretofore when labor has approached capital as its employer and asked for a betterment of working conditions, or an increase in the compensation to be paid for its services, capital has always replied:

The rates which we may charge the public for the use of our property are fixed by law. We cannot increase our returns without legislative enactment. The net returns now secured under existing rates are not sufficient to give us a reasonable return upon the amount for which we have capitalized our investment, therefore, we cannot increase your wages, unless you can procure for us a corresponding increase in rates.

These rates, and any increase thereof, must be borne directly by the public, so that the labor organizations, in seeking to obtain better wage conditions, have always been placed in direct opposition to the public interests. It has always been made to appear that the laborer, through his organization, was seeking to obtain a benefit for himself at the expense of the public.

Whenever capital has consented to increase the wages of labor it has immediately sought to secure an increase in rates, upon the ground that more money was needed to meet the increased operating expenses, and that as the net returns were not sufficient to pay reasonable dividends on the number of dollars then expressed as being in the public service, the increased cost of wages must be met by an increased rate of charges.

The carriers have been strenuously contending that all of the

profits which they can make under rates fixed by law are the exclusive property of the owners of the money invested in the enterprise; that the amount of such net profits represents the value of their properties; and that they are entitled to capitalize the value so determined. They further contend that they are entitled to establish such rates as will protect the value so determined.

If this be true, then the greater their net receipts, the greater the value of the interest which they claim in such properties. Any value which accrues to them by reason of a rate increase would be a property right, protected by the Constitution, and could not be diminished by an increase in wages made by direction of the government, without depriving them of the value of their so-called property right. The evil of the situation lies in the uncertainty as to the extent of the private interest which belongs to the owners of the dollars invested in such properties. If that interest were ascertained and made definite, the evils of the old system of railroad operation would be very greatly corrected. There must be a determination of the actual number of dollars invested in such properties. We must know how many dollars are employed in the public service, and what reasonable return they are entitled to receive. When these facts are judicially ascertained, then we can limit the taxing power so that no more than the necessary amounts of money shall be provided. If more is provided we can require that the excess, which the public has paid, shall be devoted to the public use in such manner as not to increase private interests. If such excess be expended in betterments or additions to property, then the value of these betterments or additions is a part of the value of the public interest. It is not to be added to the value of the private interest. If it be just, such excess earnings can be applied to increase wages without increasing rates or diminishing rates without lessening wages.

#### WHAT ARE THE EXACT RIGHTS OF CAPITAL IN RAILROAD PROPERTIES?

The railroad labor organizations have determined that in the interest of labor the exact rights of capital in railroad properties must be definitely ascertained. These organizations believe that this is also in the interest of the public, and this must be done whether the railroads are to be operated under governmental con-



trol or are to be returned to private operation, subject to governmental regulation.

The government has now reassumed to itself its proper function of operating these public highways. However, it is obligated to pay to the corporations, to whom the government had delegated the exercise of these functions, what is entitled "just compensation." This "just compensation" has been arbitrarily assumed to be an annual amount, equivalent, as nearly as may be, to the average annual net operating revenues for the years 1915, 1916 and 1917. No attempt has been made to ascertain whether or not this so-called "just compensation" is sufficient to meet the legal demands of capital, or is more than enough to pay compensation for the amount of money actually devoted to the public service. If it is not enough we should know it. If it is more than enough the public are being unjustly taxed, and if the public are being unjustly taxed for the benefit of capital, it becomes correspondingly more difficult to increase this tax to meet the just demands of labor. The necessity for a final determination of the amount of money required to meet the lawful demands of capital is greater, if possible, under government control than it would be under private operation.

Labor recognizes that an existing property right cannot be taken away by new legislation, without making just compensation for the value of the right. All existing rights must be determined under existing laws. We are firmly convinced that the laws, as they are now written in the constitutions and statutes of the various states, as construed by their supreme courts, and the Supreme Court of the United States, do afford an ample and sufficient basis for the determination of such rights. These laws do provide: (1) that railroads are public highways; (2) that the operation of a public highway is a governmental function; (3) that railroad corporations are agencies created for the exercise of these governmental functions; (4) that no private property interest can exist in a public highway, except that which is based upon a legislative grant; and (5) that corporations cannot acquire or assert against the public any property interest, right or privilege, except those which have been granted by their charters, or the laws under which they operate.

If these premises are to be accepted, it necessarily follows that the extent of the property interests which corporations may enjoy,

in the public highways which they operate, must be determined from a study of the charter provisions under which they have acquired these properties, together with the limitations imposed by the laws of the jurisdiction within which they operate.

#### RIGHTS OF CAPITAL MUST BE DETERMINED BY CHARTERS AND LAWS

The limitations of this article preclude anything more than an outline of the theory above stated. The privilege of issuing railroad securities is a corporate franchise. The limitations imposed upon this privilege are expressed in the grant, or the laws under which the grant was made. Corporations, being creatures of statute, do not receive their franchises from the common law, but the common law has imposed many limitations upon the powers of corporations—limitations which the experience of mankind, under the English system of government, has found necessary in order to preserve public rights against the encroachment of granted privileges. Among these limitations so imposed by the common law is the principle that unless directly authorized to do so by its charter, the corporation may not issue stocks or bonds of a par value in excess of the amount of money actually paid into the corporation, as a guaranty for the performance of its franchises. This is perhaps best exemplified by the decision of the Supreme Court of Alabama in *Commercial Fire Insurance Company v. Board*, 99 Ala., 1 at page 4, where the Court said:

Capital stock is the sum fixed by the corporate charter as the amount paid in, or to be paid in, by the stockholders, for the prosecution of the business of the corporation, and for the benefit of corporate creditors. The capital stock is to be clearly distinguished from the amount of property possessed by the corporation. . . . At common law the capital stock does not vary, but remains fixed, although the actual property of the corporation may fluctuate widely in value, and may be diminished by losses, or increased by gains. . . . When we speak of capital stock of a corporation we are understood to refer to the sum subscribed in its organization. When we speak of stock we mean the certificate issued by the corporation to the shareholders, which certificates, like titles to property, furnish the evidence of ownership of the shares of stock. Capital stock is the aggregate of money or other valuable things contributed or paid into the common treasury, as condition of the exercise of corporate functions, and a security for their faithful and prudent exercise. It is the property of the corporation, charged with a trust, it is true; but nevertheless, in its possession and control.

This common law requirement, that the amount invested in the exercise of the corporate franchise should be the exact equivalent of

the par value of the corporate securities issued, was, in the early years of railroad history, modified to some extent by the different state legislatures. The abuses resulting from the legislative privileges so granted became so scandalous that, beginning with Illinois in 1870, the people of the various states, through their constitutions, restored this old common law limitation to its former vigor and effect and at the same time deprived the legislature of any power in the future to in any way abate this requirement.

Railroad history began about the year 1830. This common law limitation upon the privilege of issuing stocks and bonds was then fully recognized. Railroad builders recognizing this limitation and faced with the difficulty of financing their promotions if held to this strict letter of the law, began to include in the charters which at that time were directly granted by legislative enactment, provisions authorizing them to issue their stocks and bonds for a consideration less than par. In many instances these charters specifically provided that such securities might be issued for any price the directors saw fit to accept and that, when so issued, they should have the same validity as though issued at par. The legislative authority so conferred upon these corporations was in abrogation of the common law and undoubtedly made legal the issuance of what would otherwise have been fictitious securities.

At the close of the Civil War, although we were then in the early stages of railroad development, there had been many scandalous emissions of watered securities which called forth a tremendous popular protest. At that time the railroads claimed that they had a right to earn a reasonable return upon the par value of the securities so issued. Many of the states faced this problem in the constitutional conventions called to frame new constitutions. Illinois, in 1870, adopted its present constitution in which it embodied the following provision:

No railroad corporation shall issue its stock or bonds except for money, labor, or property actually received and applied to the purpose for which such corporation was created. Any stock dividend, or other fictitious increase of capital stock or indebtedness shall be void.

The right asserted by the railroads at that time was that they had conferred upon them by their charters the right or privilege of charging such toll as would afford them a reasonable return upon the

par value of the securities which they had issued. In the constitutional debates, this assertion of right was met by the declaration that in order to prevent unjust taxation the people would provide in their constitution that the issuance of securities must exactly correspond with the actual investment made, in order that the returns received by the holders of such securities might be accurately known to the public and in order that the power of regulation might be intelligently exercised. At that time no railroad company had ever asserted that it was entitled to receive a return upon the value of its property.

In the Illinois constitutional debates, Judge Elliott Anthony in discussing the proposed adoption of the provision limiting the issuance of securities, said:

I wish to explain for a moment where the evils come into the community by the increase of the capital stock. The managers care nothing about the public, but in order to keep up the stock, they raise the rates of freight in order to declare dividends upon the watered stock. It is a fact well known that the moment these managers, who care nothing for the public, get control of the railroads and its earnings, they use them for the purpose of making money and stock manipulating. Rates are increased largely, by which they seek to make their watered stock pay dividends and keep it up in the market, and the injury to the public is very great.

Shortly thereafter Pennsylvania incorporated a like provision in its new constitution, and Mr. Howard, in addressing the convention in the debates on this provision, said:

But hereafter it should be known that the stock will not be allowed to be increased without limit. We should know that the stock is to be used for a legitimate and a valuable purpose; that it is to build railroads; that the issue of stock is necessary to build them, and that it is not the intention to water the stock or increase it unnecessarily. After this stock is increased it must be made to earn dividends; it must make its proper interest, and the people of the Commonwealth must be taxed in the price of transportation for the purpose of raising money to pay dividends on that stock, and, therefore, it is the right of the people to know that those issues of stock are necessary and that the proceeds are to be used for legitimate and proper improvements.

In the Kentucky constitutional debates, in discussing a like provision, Mr. Clardy said:

Now, it is a fact that a great many corporations in this State and elsewhere would show a much larger dividend, and the people would be able to see to what extent they had been imposed upon by these corporations, if it was not for the fact that the stock represents something which really does not exist, and this we seek to avoid in this fifth section.

Space will not permit me to go further into this phase of the historical development of constitutional provisions. Enough has been shown to demonstrate that the people, in the adoption of these provisions, clearly intended to compel railroad companies to make the par value of the securities issued by them coincide with the amount of investment made by the subscribers to such securities, and that the corporation's right or power to tax the people by the imposition of tolls and charges should be strictly limited to such exercise of that power of delegated taxation as would procure a reasonable return upon the investment which the subscribers to such securities had made in the corporation.

This constitutional provision has been embodied in nearly every new state constitution adopted since 1870, with the exception of the states of New York and Ohio, and in Ohio similar provisions are embodied in that portion of the constitution authorizing the creation of the state utilities commission.

In many other states in which no new constitutions have since been adopted, like limitations have been established by legislative enactment. The effect of this constitutional provision was to restore to full force and vigor the former common law limitation imposed upon all corporations, and it had the further effect, in the various states which had adopted this provision, of depriving the legislature of any power thereafter to remove the limitation so imposed. The Supreme Court of Illinois, in the case of *People v. Union Consolidated Elevated Railway Co.*, 263 Ill., 32, held that by this provision of the constitution:

The State retains the right to regulate rates charged by railroads, but it has not the power to fix tolls or charges at so low a rate as to destroy the investment or deprive the Company of its right to a reasonable return on the investment.

This constitutional declaration that issues of securities of a par value in excess of the investment actually made and applied to corporate purposes should be void now prevails in some 26 states. The common law prevails in all states except Louisiana and some code states, but in Louisiana the constitution prescribes the same limitation and in many of the code states like provisions have been supplied by the legislature. In many states that have not adopted new constitutions since 1870 this limitation has been imposed by statute. The purpose of this limitation, as construed by the Supreme Court of Illinois, was to preserve in the state a right to regulate the use of

these highways, provided that in such regulation the state did not deprive the carrier of its investment or a fair return upon the investment.

The full extent of the private interest which the legislature has granted to carriers in public highways, under such a limitation, is measured by its investment devoted to the public service, and any regulation of the use of the highways which preserves to the carrier the integrity of its investment and a fair return upon that investment secures to the corporation all of the rights which are guaranteed to it by the constitution.

#### LABOR'S DEMANDS CAN BEST BE ADJUSTED AFTER CAPITAL'S RIGHTS ARE DETERMINED

The determination of the extent and value of the rights which have been granted to railroad corporations is a judicial question. The federal government needs only to provide a forum for the determination of that question, before whom all corporate interests may be presented. Such a determination will forever settle the extent of the private rights in our great national highways. Upon such a determination the demands of labor can be fairly adjusted without the antagonism of the owners of capital, and without undue popular disfavor. Organized labor is earnestly seeking to procure such a determination. We believe that the public interest requires that this should be done.

If this can be brought about a sound basis will have been laid for future regulation and even for governmental acquisition, if in the course of time the people should demand it. When these rights are so ascertained, the speculative element in railroad securities will have been eliminated. Investments made therein by widows, orphans, insurance companies and savings banks will be as safe as though they rested upon governmental securities. Until this is done labor will be restless, capital will shrink from a venture that does not offer adequate security, and the sovereign powers of governmental regulation must be clouded with doubt and uncertainty, and forever hindered by litigation.

## PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION OF TRANSPORTATION FACILITIES

BY DELOS F. WILCOX, PH.D.

### PRIVATE OWNERSHIP AND GOVERNMENT OPERATION IN EUROPE

A report issued by the British Board of Trade in August, 1913, in response to an order of the House of Commons, dated December 14, 1911, is entitled "State Railways (British Possessions and Foreign Countries)." This document gives certain statistics as to the ownership and operation of railways outside of Great Britain as shown by the latest reports then available. The railways are divided into four classes: (1) publicly owned and operated; (2) privately owned but publicly operated; (3) publicly owned but privately operated; (4) privately owned and operated. The total mileage recorded in this report is 594,909. If to this is added the railway mileage of the United Kingdom, the total will be brought up to approximately 650,000 miles, of which about 250,000 miles are in the United States. Classified according to ownership and operation the entire railway mileage of the world at the beginning of the war would be distributed approximately as follows:

Publicly owned and operated, 164,057 miles, or 25.2 per cent

Privately owned but publicly operated, 11,030 miles, or 1.7 per cent

Publicly owned but privately operated, 35,244 miles, or 5.4 per cent

Privately owned and operated, 440,016 miles, or 67.7 per cent

Total, 650,347 miles

It will be seen from these approximate figures that prior to the war only about 11,000 miles, or less than 2 per cent of the railway mileage of the world, was in the peculiar status of being privately owned and publicly operated. The situation has since been radically changed by military exigencies, for the assumption by the governments of Great Britain and the United States of the operation



of their privately owned systems has put about 300,000 miles, or almost one-half of the total mileage of the world, in this class. The available data with respect to pre-war precedents for state operation of privately owned railways are meager. The British report to which I have referred distributes the mileage then in this category as follows:

- Austria, 3,593, or 25.5 per cent of its total mileage
- Hungary, 5,771, or 44.7 per cent of its total mileage
- Belgium, 151, or 5.2 per cent of its total mileage
- Denmark, 61, or 2.66 per cent of its total mileage
- France, 229, or .9 per cent of its total mileage
- Norway, 1,225, or 69.9 per cent of its total mileage

It will be noted from the above that the only country in which more than 50 per cent of the railways fell within this category was Norway, and here the preponderance of public operation and private ownership was so great as to make this the characteristic plan for that country. As against 1,225 miles privately owned and publicly operated there were only 396 miles publicly owned and publicly operated and 296 privately owned and privately operated. While Austria and Hungary each showed a considerable mileage privately owned and publicly operated, this arrangement cannot be said to be the characteristic one for either of these countries. Austria had 8,074 miles of publicly owned and operated lines, and 2,409 miles of privately owned and operated lines as compared with the 3,593 miles of privately owned and publicly operated lines. In Hungary there were 5,063 miles publicly owned and operated and 2,058 miles privately owned and operated as compared with 5,771 miles privately owned and publicly operated. In the other countries, Belgium, Denmark and France the proportion privately owned and publicly operated was so small as to be practically insignificant. I have not found a full explanation of the situation in Austria and Hungary, but I take it that the privately owned lines operated by the state were held under lease, and were operated in conjunction with the publicly owned lines just as one railroad corporation frequently incorporates in its own operating system lines leased from other companies. I see nothing in this plan that can properly be regarded as a precedent for the present arrangement in Great Britain and the United States. When we come to an exami-

nation of the situation in Norway we find here also that what on its face appears to be a precedent is not one in fact; for the government of Norway had a preponderant interest in the railways which were classed as privately owned. The total capital invested in these lines was shown to be £10,936,011, which was distributed as follows with respect to the sources from which it was derived:

From the state (shares and loans), £8,413,021, or 76.9 per cent

From communes and individuals (shares), £1,084,526, or 9.9 per cent

From outside loans, £273,632, or 2.5 per cent

From earnings £1,164,832, or 10.7 per cent

These figures show that governmental operation of privately owned lines in Norway was merely public operation of railways which had been heavily subsidized by the government and which were doubtless soon to be exclusively owned by it. This does not furnish a precedent for public operation of privately owned lines in the sense in which this is now being carried on in Great Britain and the United States.

It may be said, therefore, that the working out of a correct policy under the circumstances now prevailing in the United States must be undertaken without much help from direct precedents. The available published information with respect to the experience of Great Britain during the past three years is too meager, and the final results are at the present moment too uncertain to give the American public much satisfactory guidance. No doubt many Americans who, in connection with the work of the war, have had an opportunity to observe and secure knowledge of the practical results of government operation in Great Britain may be in a position to reach conclusions satisfactory to themselves, based upon British experience, and of course it is to be hoped that the United States government, through its intimate relations with the British government during the war, will be able to make advantageous use of the results of England's experiment.

#### STREET RAILWAY PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION

Before entirely giving up the search for adequate precedents, it may be well to examine the forfeiture provisions of some of the

more recent street railway resettlement franchises and contracts which have been worked out in certain American cities.

The Chicago resettlement ordinances of 1907 set the standard in many respects for "modern" street railway franchises in the United States. The ordinance of the Chicago Railways Company had certain provisions of considerable interest in connection with this discussion. It provided that within three years after its passage the company should perfect its title to the entire street railway system then being operated by the receivers of the Chicago Union Traction Company, and should free this system from any lien or encumbrance other than those created under its express authorization. It further provided for the immediate rehabilitation of the system, and for the distribution of the gross receipts. After operating expenses and taxes had been paid, a sum equivalent to 5 per cent of the fixed purchase price of the street railway system was to be retained by the company, and the net receipts remaining thereafter were to be divided in the proportion of 45 per cent to the company and 55 per cent to the city, the city having the right upon proper notice, at any interval of six months, to purchase and take over the property at a price fixed in the ordinance, plus the cost of additions, extensions and betterments made subsequent to its going into effect. Section 25 of the ordinance established a special remedy in case of the company's default in perfecting its title as required, and provided that in such case the city might take possession of and operate the system upon terms and conditions quoted in the footnote.<sup>1</sup>

<sup>1</sup> If, at any time, the Company shall be in default with respect to the obligation expressed in subdivision (d) of Section 1 of this ordinance in regard to perfecting title to its property and removing liens and encumbrances therefrom, the Company shall, upon demand, surrender to the City possession of its entire street railway system and the City may enter into possession thereof and of each and every part thereof, maintaining, operating, improving or extending the same, and keeping up the funds described in Sections 16 and 18 of this ordinance, in all respects as the Company might do, and as the Company would be obliged to do, if in possession under the provisions of this ordinance, until the obligation of the Company under said subdivision (d) of Section 1 of this ordinance shall be completely performed, or until the City shall purchase said property, or cause the same to be purchased by its licensee, as in this ordinance provided. Until the happening of one of the events last mentioned, if the City in its absolute discretion shall so elect by notice in writing delivered to the Company, the continuance of the Company in possession shall be subject to the obligation of applying its net

It will be noted that the provisions therein quoted relate to a special default. The general provision of the ordinance with respect to default is to the effect that if such default is continued for a period of three months, exclusive of all times during which the company is delayed or interfered with without its connivance by unavoidable accidents, labor strikes, or the orders or judgments of any court entered in any suit brought without its connivance, the city shall be entitled to declare the ordinance and all the rights and privileges of the company to maintain and operate street railways in any of the streets or public ways of the city to be forfeited and at an end. The ordinance stipulates, however, that if the company

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receipts as hereinafter in this Section provided until the City elects to take possession as in this paragraph provided.

If, in the event of such default, the City elects to take possession of said property, the Company shall be bound to provide funds sufficient to fulfill all its obligations in respect of extensions, improvements, reconstruction, equipment, re-equipment, and additions to said system of street railways and the contribution of moneys toward the cost of subways and extensions thereof, as though its possession of said system of street railways had not been interrupted.

Whether in case of such default the City elects to take possession or to leave the Company in possession, in either event the receipts of said system of street railways shall be applied as hereinbefore in this Section provided, except that the proportion of net receipts which by this Section the Company is authorized to retain for its own use and benefit shall be paid over to a depositary as in this Section provided, to be, by such depositary, applied in accordance with the provisions of this ordinance next hereinafter set forth to remove any defect of title or any lien or encumbrance, other than such as are herein expressly authorized to be created, which may exist with respect to said system of street railways.

To the extent that the City shall proceed to exercise the powers, or any of them, mentioned in subdivision (c) of Section 1 of this ordinance, said moneys shall be paid out by the depositary upon the certificate of the Mayor of the City and upon the order of such disbursing officer or agent as the City may designate, to provide funds with which to pay the purchase-price of property acquired by the City pursuant to said subdivision, or to indemnify the City for expenses incurred in the exercise, or attempted exercise, of its powers, as in said subdivision provided. In the event that the City shall elect to leave the Company in possession of said property as aforesaid, the City shall have the additional right to require the depositary, upon like certificate and order, to pay out said moneys for any or all the purposes aforesaid in the absolute discretion of the City, irrespective of the limitations contained in said subdivision (c) of Section 1 of this ordinance. Such certificate of the Mayor shall be conclusive evidence to the depositary of the facts therein stated.

The depositary may also pay out said moneys upon the order of the Company

pledges or mortgages its property or franchises granted by the ordinance for the security of loans maturing not later than the date when the ordinance expires, the amount of such loans not being in excess of the purchase price of the system, the right of forfeiture accruing to the city by reason of the company's violation of the provisions of the ordinance shall not be asserted or exist against the mortgagees and shall not impair or affect their right to recover by legal process against all the property of the company, including the rights granted by this ordinance up to a sum not in excess of the purchase price.

The dual subway contracts executed by the Public Service

for the acquisition or extinguishment of any outstanding title, estate, interest, lien, encumbrance, claim or demand, constituting a defect of title of the Company's property, but no such payment shall be made on the order of the Company without (20) days' previous notice in writing to the City Comptroller of said City, which notice shall specify the particular title, estate, interest, lien, encumbrance, claim or demand to be acquired or extinguished, and the name of the holder or holders thereof, to whom payment is proposed to be made and the amount of such payment. A certified copy of a resolution of the board of directors of the Company, requesting such payment and stating the facts claimed to justify the same, shall be conclusive evidence to the depository of the facts so stated, in the absence of notice of objection by the City, as next hereinafter provided. If, within said period of twenty (20) days, the City, by notice in writing delivered to the depository, shall object to such proposed payment and shall agree to waive any default, or supposed default, by reason of the existence of such alleged title, estate, interest, lien, encumbrance, claim or demand, and to take title or cause its licensee to take title to said system of street railways subject thereto in the event of purchase by the City or its licensee, pursuant to the provisions of this ordinance, then and in that event the depository shall not make the payment referred to in such notice given to the City by the Company, but shall set apart out of the proportion of the net receipts aforesaid in its hands and shall hold an amount equal to such proposed payment upon the specific trust to pay the same, with all accumulations to the City in either of the following events namely:

(1) If the City shall, at its own expense, cause the said title, estate, interest, lien, encumbrance, claim or demand to be extinguished or conveyed or transferred to the Company.

(2) If the City shall purchase said street railway system, or cause the same to be purchased by its licensee, as in this ordinance provided, and shall take title to said street railway system subject to such outstanding title, estate, interest, lien, encumbrance, claim or demand without deduction from the purchase-price on account thereof.

At the beginning and at the end of any such period during which the Company's right to receive or retain for its own use and benefit a portion of said net receipts

Commission for the First District on behalf of the City of New York, March 19, 1913, provide for the construction and equipment of rapid transit railways by the use of funds furnished in part by the city and in part by the company, and for the lease of these railways when completed, to the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, subject to the city's right, upon the expiration of a period of ten years from the date of the commencement of operation, or at any time thereafter, to terminate the leases and take possession of the property for public operation upon paying the companies the amounts then due them on account of their investment, and the obligations of the contracts. The leases, unless sooner terminated, run for a period of forty-nine years, and the contracts provide that within that time the original contributions to capital made by the companies shall be amortized out of earnings, so that the purchase price of the property, starting at a maximum when the city's right to purchase accrues at the end of ten years, will gradually decrease to nothing (except for the unamortized portions of capital supplied by the companies for equipment in addition to the initial equipment required by the contracts) at the expiration of the leases. These contracts, like the Chicago

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shall have been suspended, as hereinbefore provided, there shall be an accounting in respect of the receipts of said street railway system, to which the depository shall be a party, substantially as provided in Section 25 of this ordinance with respect to the annual account; and any balance of net receipts in the hands of the depository not expended as aforesaid, accruing prior to the expiration of such period shall be paid to the City, if the City was in possession during such period, or to the Company, if the Company was in possession during such period, and the Company shall be entitled to receive at the time and subject to the conditions hereinbefore in this Section and Section 18 set forth the share of said net receipts hereinbefore mentioned, accruing after the expiration of such period.

If the City shall enter into possession of said system of street railways, as in this Section provided, it may retain such possession for not more than six months after said title to said system of street railways is perfected as aforesaid and after receiving six months' notice thereof in writing from the Company; and if, while in possession under the authority of this Section, the City shall give notice of its intention to purchase said street railway system of the Company, or to cause the same to be purchased by its licensee at the next succeeding date at which such purchase could be made under this ordinance, the City shall be under no obligation thereafter to surrender such possession by reason of such title having been perfected, unless the City or its licensee shall fail to consummate the purchase at the time specified in such notice.



ordinances, provide for the distribution of the gross receipts, and prescribe the priorities in even greater detail. It is sufficient for our present purposes to state that after previous rental obligations, taxes, operating expenses, maintenance and depreciation have been provided for, the companies are to receive compensation equivalent to their average net profits during a period prior to the date of the contracts, and interest at the rate of 6 per cent per annum upon the new capital supplied by them under the terms of these contracts. As the next deduction from the gross receipts the city is to receive a return upon the portion of the capital which it has contributed to the joint enterprise. Next, a deduction is to be made for the establishment of a contingent reserve fund, and the net amounts remaining after the various deductions described are deemed to be "the income, earnings and profits" of the rapid transit systems, and are to be divided in the proportion of 50 per cent to the companies and 50 per cent to the city.

Our particular interest in these contracts in connection with the present discussion has to do with the remedies provided in case of the default of the companies in paying over the amounts due to the city from the gross receipts, or in case of the failure or neglect of the companies to observe and fulfill the conditions and obligations of the contracts. In such a contingency the city has a choice of remedies, but the one in which we are at present interested is set forth in the Interborough Rapid Transit Company's Contract<sup>2</sup> as follows:

In case of default of the Lessee in paying the rental herein provided or in case of the failure or neglect of the Lessee faithfully to observe, keep and fulfil any of the conditions, obligations and requirements of the Lease, the City, by the Commission upon thirty (30) days' notice to the Lessee of its intentions so to do may serve notice of such default upon the Lessee, directing the Lessee to cure the default within ninety (90) days. If there shall be any dispute as to the fact of default or as to the remedying thereof the Lessee may apply to the Court. If the default be not remedied within such time or within such further time as may be allowed by the Commission or by the court, the City shall thereafter be at liberty to enter upon and as the agent of the Lessee operate the Railroad and Equipment and Existing Railroads and Existing Equipment at the rate of fare and in the manner provided in the Lease for the remainder of the term, or to enter into a contract, subject to the same conditions, with some other person, firm or corporation to operate the Railroad and Equipment and the Existing Railroads and

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<sup>2</sup> Contract No. 3, Article 89.



Existing Equipment as the agent of the Lessee for such period of time as the City may elect. It shall be a condition of such further operation by the City or by the person, firm or corporation with whom or with which the City may contract, that the revenue otherwise distributable to the Lessee under paragraphs 6, 7, 8 and 9 of Article XLIX hereof shall be devoted to the payment of interest and sinking fund charges, if any, upon bonds issued by the Lessee for the purpose of Construction and Equipment under this contract and for the purpose of refunding bonds issued upon the lease of the Existing Railroads and upon the Existing Equipment, and any balance thereof after the payment of such interest and sinking fund charges and after the payment of damages suffered by the City by reason of such default and unpaid by the Lessee from other sources shall be paid to the Lessee. If the City or such other person, firm or corporation shall fail to pay the charges above referred to and if the City shall not terminate this contract as provided in this chapter, the Lessee shall be entitled to regain possession and to resume operation of the Railroad and Equipment and the Existing Railroads and Existing Equipment.

The street railway franchise granted in 1914 by the City of Kansas City, Missouri to the Kansas City Railways Company also contains provisions for the seizure of the street railway system by the city, as a penalty for the company's non-compliance with the terms of the ordinance, and for its operation by the city for the benefit of the parties having a financial interest in it. As an example of the peculiarities of forfeiture where vested rights are involved, the Kansas City ordinance provides an interesting exhibit of the characteristic workings of the American mind. Section 52 of this ordinance is as follows:

If the Company shall willfully do or cause to be done any act or thing by this ordinance prohibited, or willfully fail, refuse or neglect to do any act or thing required by its terms, it shall forfeit all rights and privileges conferred upon it by this ordinance, but such forfeiture shall not affect the right of mortgagees and those claiming under the Company to capital value and return thereon, as herein provided. Such forfeiture may be had by proceedings by the City in its own name or that of the Prosecuting Attorney or Attorney General in the Supreme Court of the State, or if that court declines to assume jurisdiction, in any other court of lawful jurisdiction. *Provided, however,* before the City shall have the right to begin a proceeding to enforce said forfeiture, it shall give notice to the Company in writing of the specific dereliction or derelictions complained of, and unless the Company shall promptly and with expedition fully remove such alleged cause of forfeiture, the City shall have the right to begin and proceed with the enforcement of said forfeiture.

For a second or subsequent breach of the same provision, the City shall have the right to proceed without further notice, to enforce such forfeiture.

If there be a final decree of forfeiture of the Company's rights and privileges hereunder and the cause of forfeiture be not removed within a reasonable time

fixed in the judgment, then the right of the Company to manage and direct the property shall cease and determine and be forever foreclosed, and 25 per cent of that portion of the surplus income of the Company going to it as participation, from date of such final judgment, shall be forfeited to the City and be put back into the property without adding to or in any wise increasing capital value. Either party may appeal from the decree of the court in the first instance, but if the Company so appeals, then pending such appeal its rights of participation in the surplus income shall be suspended and the funds accumulated by reason thereof sequestered, and if it loses upon such appeal, the fund so sequestered shall be forfeited by the Company and paid to the City. Pending such appeal, the property shall be managed by five trustees, two of whom shall be selected by the Company, and three by the Mayor from the City's directors. If there be no appeal by the Company from a judgment of forfeiture, or if there be an appeal by it which results in an affirmance, then the three trustees designated by the Mayor for the City shall manage and direct the property without any representation by the Company, but such trustees for the City shall continue in the exclusive possession of the property, subject to and under the terms of this ordinance, and shall carry out all its obligations with respect to capital value, return thereon, participation of the parties and the rights of all parties as fixed herein, the Company not having thereafter any right to any possession of any part of the property. In case of any vacancy in the office of trustee named by the City, his successor shall be chosen in the same manner as the City Directors are selected, and in case of a vacancy in the office of trustee named by the Company, prior to final judgment of forfeiture, his successor shall be chosen by the Company.

Should the Company be finally adjudged a bankrupt or insolvent and thus be unable to carry out this contract and perform the obligations imposed upon it thereunder, then such adjudication shall have the same force and effect as an adjudication of forfeiture as above provided.

#### PRESENT SIGNIFICANCE OF PRECEDENTS FOR PRIVATE OWNERSHIP AND GOVERNMENT OPERATION

Such are the lame and inadequate precedents which have come to my attention for the public operation of privately owned transportation facilities. Precedents are of no value except as they make it easier to take a desired course of action, or as they throw light upon the ways in which a course of action once taken will or may affect other actions to be taken later on. In the present case the President has acted, and the operation of the railroads has been taken over and placed under the jurisdiction of Secretary McAdoo, acting as Director General of Railroads. A discussion of the question as to whether or not this step was justified from the point of view of precedents would at this time be a purely academic one. Now that the step has been taken, and we are in the midst of a stu-

pendous international struggle, it would be a thankless task to make our discussion hinge upon this issue. The real function of precedents is not, therefore, to furnish us with justification for praising or blaming the President for taking over the railroads, but to point out the probable ultimate effect of this step upon public policies, and to show the ways in which governmental operation and the legislative and contractual arrangements about to be made with respect to it may be best adapted to the furtherance of a sound future policy, and the avoidance of mistakes which might otherwise be made.

Public operation of publicly owned enterprises is a general and normal governmental policy, although there are certain precedents in practice and certain considerations in theory which may be cited in favor of the policy of government ownership and private operation. The value of these precedents and the weight of these considerations we need not discuss at this time. The reverse policy of private ownership with public operation is, as we have seen, without substantial precedent, prior to the beginning of the war, and cannot be regarded as a normal or permanently satisfactory arrangement. It is in both Great Britain and America an emergency policy, the outgrowth of unprecedented conditions, in which national security is in the utmost peril. The question on everybody's lips is: Will the railroads ever be permitted to go back to private control? or, Will public operation inevitably develop into public ownership? Up to the present time the United States has no financial interest in the railroads, that is, it has no share in their ownership. I leave the new government railroad in Alaska out of consideration as that is an isolated enterprise which is in no real sense a part of the system of railroads in the United States. It might be urged that in view of the original land grants made by the government to the transcontinental lines, grants which have now come to represent an enormous value, the government has an interest in the railroad investment. This is not true in any legal or practical sense, for the lands received from the government as a free gift are now as much the property of the railroads as any portion of the equipment provided by their own capital. If the government acquires the railroads it will have to buy back its gifts just the same as if it had not been the giver. In this country there is no financial interest held by the government, and no nucleus of publicly owned lines to fur-

nish the normal foundation for government operation. It seems probable that if the present emergency operation leads to government ownership, the latter will be undertaken on a large scale through the purchase of substantially all of the railroads at once or at least as a part of one big scheme. Whether government ownership will actually follow as a consequence of government operation is a matter that can only be determined in the future. The precedents throw no light upon this issue.

The administration bill now pending in Congress provides that the President may enter into an agreement with any railroad, guaranteeing to it as just compensation for the use of its property during the period of federal control an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June 30, 1917, and that any net railway operating income in excess of this standard return to the companies shall be the property of the United States. The bill also provides that adequate depreciation and maintenance of the railroad properties shall be included as a part of operating expenses or provided through a reserve fund, in accordance with principles and rules to be determined by the President. As introduced in Congress the bill provides that federal control of transportation shall continue during the period of the war and until Congress shall thereafter order otherwise. The chief controversy with respect to this legislation is now raging about this provision of the bill; the conservatives—those who are strongly opposed to government ownership and operation as a permanent policy—insisting that a definite time limit shall be fixed in connection with the close of the war, when the railroads shall be handed back to their owners. If the administration bill should become law in its original form, and if it should be determined by the effective voice of the nation that government operation is to be continued as a permanent policy, one of two courses would naturally be chosen. Either the government would continue to operate the roads without buying them, in which case it would have to pay the owners a permanent annual rental as fixed during the war period in accordance with the terms of the act, or the government would determine to purchase them, and then it would have to pay a price largely determined by their earning power as fixed in the same way. If, for example, following the close of the war there should be a great slump in the net earnings of the railroads,

due either to a falling off of gross revenues, or to a relative increase in operating expenses and depreciation charges, the government would be in a position where, if it continued to operate the roads without buying them, it would be bound by contract to pay an excessive rental, or if it concluded to buy them, it would have to pay a price largely determined by the capitalized value of an excessive rental. If, on the other hand the average net earnings during the period immediately following the war should be in excess of the earnings during the war period, the government would reap an advantage by the contracts authorized by the act, whether the roads continued to be operated by the government under private ownership or were to be purchased outright. As the price to be paid for a public utility or any other property almost always has great weight in determining whether or not a purchase will be effected, it is possible that the policy of government ownership and perhaps of continued government operation may, if the administration bill is enacted into law and the contracts authorized by it are consummated, be determined in the affirmative or in the negative, according to the way in which contracts and arrangements entered into in time of war and based upon war conditions work out in time of peace. If it should be found that under these war contracts the government had bound itself to pay an excessive annual rental as a condition of continued government operation, or an excessive purchase price as a condition of the acquisition of the railroads, controlling public opinion might be turned in favor of restoring the railroads to their present owners, and perhaps it would not be unsafe to predict that if the roads should be so restored immediately following the war, their subsequent purchase by the government, or the resumption of government operation, would be long delayed by the extreme financial exigencies arising out of the liquidation of the national war debt.

Precedents are lacking, and for that reason they will have to be made. Sometimes to avoid the "intolerable toil of thought" we copy methods or plans which have been adopted elsewhere, but so recently as not to have been subjected to the test of practical operation. I have referred earlier in this article to the forfeiture and default provisions of the street railway franchise contracts recently adopted in Chicago, New York and Kansas City. These provisions have some relation to each other and might be used to a certain extent as a basis for the determination of the policy to be followed by

the government in the operation of the railroads while they remain in private ownership, but no one of these provisions has ever been subjected to a practical test, and therefore they have no particular weight, except as schemes which have appealed to certain groups of men upon whom was thrust at given times the responsibility for solving difficult problems in public relations. It seems to me that in view of the absence of precedents and in view of the extraordinary conditions now prevailing, it would be a great mistake for the government of the United States by legislation or by authorized contracts to fix the annual compensation to be paid to the railroads for the entire period covered by governmental operation without regard to the financial developments in the railroad business in the years following the war. In my judgment it would be better to limit the compensation features of the present arrangement to a definite period, say, until the end of one or two years following the cessation of hostilities, leaving for subsequent readjustment a determination of the earning power of the roads under the conditions prevailing after the war.

## GOVERNMENT OPERATION OF AMERICAN RAILROADS

BY CLIFFORD THORNE

The government operation, and possible ownership, of American railroads presents some issues of law and public policy that will be of commanding importance during the next few years. It will be well for every citizen to have a clear grasp of some of the fundamental facts about which this contest will be centered.

Government operation is a great experiment, and is fraught with many possible consequences of the first magnitude. Our object will be to outline briefly some of the essentials of the plan now pending in Congress, how that plan differs from the one adopted in Great Britain, and we will present a discussion of two or three of the principal objections which have been offered to the pending measure, with special reference to the compensation proposed in this greatest financial transaction in the history of the world.

Our object is not to produce an historical monograph for the antiquarian of the future to mull over, nor a dissertation on the many knotty constitutional and other legal problems involved. Both of these tasks would be interesting and instructive, perhaps. But there are a few vital issues of public policy involved in the legislation now pending which present real live questions worthy of the consideration of every citizen, and it is our purpose to discuss these issues. Unless we are gravely in error the railroad question will now be forced into national prominence, surpassing that which it has occupied for many years; and every man who has the responsibility of representing the people on this subject will be called upon at some future time to render a strict accounting for his acts of today.

To understand clearly the discussion and appreciate the relative importance of matters considered it is necessary to have a true conception of the object of taking over the railroads, and what it is expected to accomplish by that act.

At the moment of supreme test, when the public interest demanded the highest efficiency in our transportation system, private operation broke down and the government had to come to the rescue. Precisely the same thing occurred in Great Britain. This



did not happen in the other great civilized countries engaged in the present war, because they had already taken over the operation of most of their railroad systems many years ago. It is a noteworthy fact that not one of these other nations found it advisable to go back to private operation when the crisis came. The only nations which found it necessary to make a change in their methods of dealing with their railroads were those which substituted government operation for private operation.

The incidents leading up to this memorable event in the history of American railroads are interesting. For seven years our railway companies have maintained a national combination for the purpose of forcing general advances in freight rates. During this period several cases involving colossal sums of money have been won and lost. In the fall of 1917 the eastern and western railroads asked the Interstate Commerce Commission for a reopening of the celebrated Fifteen Per Cent Advance Rate Case. In the spring they had lost the case on approximately three-fourths of the traffic in the United States.<sup>1</sup> The sum involved in this one proceeding was stupendous, aggregating approximately four hundred million dollars annually, or 5 per cent on eight billion dollars, which is more money than the total cost of the Civil War. It is difficult for the human brain to comprehend such figures. The sum exceeds that involved in any other case between private parties in the history of civilization. During the course of the year 1917 our government floated a war loan of a little less than seven billion dollars, which has been described as the greatest in human history. Announcement has been made that during the coming year the government will need twenty billion dollars more money for war purposes.

At this critical moment the eastern railroads announced that if the advances they were then asking were granted in full the car-

<sup>1</sup> In 1911 the railroads lost their advanced rate cases completely. In the spring of 1914 they lost the 5 per cent case on approximately 90 per cent of the traffic involved. On rehearing in the fall of 1914 the Interstate Commerce Commission granted the eastern railroads the 5 per cent on approximately 50 per cent of the tonnage involved. In 1915 the western railroads lost their case on approximately 80 per cent of the tonnage involved. In the spring of 1917 the eastern roads were granted a 15 per cent advance on approximately two-thirds of the traffic involved, and the western and southern roads lost their case on approximately everything except coal, coke and iron. These figures are estimates only. Thousands of individual changes in rates have been made from time to time.

riers would come back immediately and request another 15 per cent. The western railroads had just applied for a reopening of their case. The unending cycle of advances, advances, advances, was appalling. The railroads over-played their hand. At this moment the shippers for the first time during all these proceedings from 1910 to 1917 took the position, as one of two or three alternatives, that the time had finally arrived for the government to take over the operation of American railroads. They urged the Commission to make this recommendation to Congress under the provision of the Act to Regulate Commerce requiring the Commission to make suggestions concerning important legislation affecting our transportation system. Within three weeks the Commission made a report to Congress naming government operation as one of the two alternatives which should be adopted by the government, and within six weeks the President took over the railroads.

Immediately after the suggestion of government operation was made by the shippers the proposition was bitterly fought by the railroads. Interviews against the measure were given out by leading railway executives. Newspapers and magazines with well recognized railroad sympathies, severely criticised the proposition.

When the government operation of railroads appeared inevitable the railroad officials reversed their attitude, and quickly established intimate relations with the government officials engaged in drafting the necessary legislative measures. The wisdom of this procedure was self-evident and it bore fruit in abundance, as we shall see.

#### ESSENTIALS OF THE PLAN NOW PENDING IN CONGRESS

Shortly after the reconvening of Congress in December, 1917, a bill was introduced in both Houses establishing the plan of government control. This measure contemplates the government operation of the principal railroad systems in the country under the immediate direction of one man. To fill this responsible post the President has selected the Honorable William G. McAdoo as Director General. Under the provisions of this bill the President is authorized to guarantee:

1. Regardless of how high the cost of labor and supplies may go during the war, the average net railway operating income for the three years ended, June 30, 1917, plus additional compensation for

all improvements built since that date out of new money, government loans, or earnings from operation.

2. To adequately maintain the properties.

3. To maintain railway credit by loaning all necessary funds for improvements and betterments.

4. To return the properties at the end of the period in as good condition as when taken.

If satisfactory agreements cannot be effected with any carriers the President has the option of increasing the compensation providing exceptional reasons exist, or the matter may be referred to a board of referees, and upon failure to agree the whole matter is subject to trial in the court of claims. Allowing for the inevitable increases for companies not accepting the proposed compensation, the total sum guaranteed will probably exceed one thousand million dollars annually. (The Senate Committee on Interstate Commerce estimates this at \$955,000,000 to \$960,000,000, if all roads should accept the original guaranty; but there are many short lines, whose earnings have been squeezed down by the large companies in the divisions of through rates. The large companies under the provisions of the bill will continue to get these excessive earnings, and the small roads will go into court, as provided in the bill, in order to secure additional compensation. A railroad system like the Pennsylvania will increase its standard return above the average of the three-year period in the following manner: the parent company will accept the guaranty provided in the bill and the subsidiary will go into court—and *that subsidiary may be owned completely by the parent company*. The settlement should be by "system." The original bill so provided it; but a clever change was made specifying a "railroad" or a system.)

The total bonded indebtedness of American railways, as of June 30, 1917, was \$10,021,730,075; and the capital stock outstanding in the hands of the public was \$6,314,570,354. After the payment of all interest the railroads as a whole, under the proposed guaranty will earn, net, approximately  $8\frac{1}{2}$  per cent on all their capital stock outstanding; this includes the rich and the poor, water and all. Think of substituting for the six billion dollars of railroad stocks in this country, six billion dollars worth of  $8\frac{1}{2}$  per cent government bonds. It is true the companies cannot increase their dividends during the period of federal control without the consent

of the President; but there is nothing to prevent the distribution of the accumulated surplus after the war is over. In the case of a bond the government takes your money and at the end of the period returns your money, paying interest in the interim. Likewise, under the plan of federal control, the government takes the property of the railway company guaranteeing to return the property at the end of the period, in as good a condition as when taken, and also guarantees an annual return. Here we have all the essentials of a government bond—the payment of the principal and interest.

We are shielding the railroads from the effects of the war; we are protecting them from all advances in the cost of materials and in the cost of labor; we are guaranteeing the railroads their net income earned during the most prosperous three-year period since the steam engine was invented—regardless of what may happen to their expenses.

During the years 1916 and 1917 American industry—including our railroads—received the profits from the very large demands occasioned by the European war, without being compelled to suffer the attendant losses that must inevitably follow our own active participation in the struggle. The result was that American industry in practically all lines reaped tremendous profits. That exceptional condition ceased when we entered the war. The earnings during such a period do not constitute a just criterion of normal earnings before or after that period.

Consider a few of the circumstances which make this true. When the war was thoroughly in progress large demands for clothing, food, and war munitions came from the European countries—demands far in excess of what they required in former years, because a large per cent of their population was not engaged in productive pursuits, and because of the enormous consumption of munitions which did not exist in former years. On the other hand, our industrial population was not depleted, and the ordinary traffic among our own people still continued. The excess demand from Europe was a net gain of vast proportions. All American business felt this tremendous stimulus.

In 1916 the net earnings of American railroads as a whole suddenly increased to an amount that was two hundred million dollars greater than ever before in their history. In 1916 the net income of the eastern railroads above all their expenses, taxes, and

interest on debt, exceeded any other year by more than sixty millions, an increase of over 27 per cent. These increases were very remarkable. Nothing like this had ever occurred before in the history of our country. The earnings of some companies had shown phenomenal increases at times, while others might remain stationary or decline; but an increase of this character in the whole industry was phenomenal. The fiscal year 1917 showed net earnings surpassing any other year, with the single exception of 1916. This condition in the railroad industry was simply analogous to what occurred generally throughout the nation.

But what will follow our own participation in the conflict—when we are on the same war footing as our allies?

First—one to five million active, strong men in the prime of their youth are to be taken from our farms and factories. The effect on the cost of labor and supplies is self-evident.

Second—it will be impossible for many industries to continue because ultimately we will have to concentrate our work, as never before, on the real necessities of life, in order to produce them in sufficient volume to meet the increased demands, with a decreased industrial population. The same thing has occurred in the leading European countries engaged in the war.

Third—capital will be extremely difficult to secure, and will command exorbitant rates. The war needs of the government will demoralize the money markets. Some conception of this may be gained when a person realizes just how much money the government will require to carry on this task of waging a war on another continent. The chief creditors of a government are, ordinarily, its own citizens. When their funds are drained, interest rates go skyward. A short time ago Anglo-French 5's, which have behind them the combined credit of England and France, were selling on a 9.3 per cent basis. City of Paris 6's have been selling on a 12.5 per cent basis. British consols—long considered the premier security of the world—have been selling at a yield ranging from 5 to 6 per cent. The 5½ per cent bonds of Great Britain which have but little risk connected with them, coming due next year, were selling during the closing weeks of 1917 on an 8.6 per cent basis. These government bonds in the past have been sold on a basis ranging from 2 to 4 per cent. When United States government bonds are sold on a 6 or 8 per cent basis, you will find industrials selling on a 10 or 12 per

cent basis, and the market values of industrial securities will decline accordingly.

During 1917 there was a slight recovery in money rates in Great Britain, due, undoubtedly, to our entrance into the war, and our furnishing much needed capital for some purposes. After the first effect of that has passed, and money for investment purposes in the United States becomes scarce, it is inevitable that the declines in security values will begin again on both continents. The extreme western portion of the United States has felt the pressure less than any other part of our country. Today money is being loaned for extended periods to private companies in California on a lower basis than the securities of the British government are being sold on the London market.

During the next few years it is certain that many individuals and companies will be unable to secure labor or materials except at enormous prices, and new capital will command very high rates. Coupled with this increased cost of operation the market for many products will be partially or wholly destroyed.

We, as a people, have not realized that which is inevitable if this war continues. The sooner we come to a realization of the true situation, the better it will be for all of us, and the more intelligently will we deal with the great problems pressing upon us for decision.

A document recently published for the purpose of encouraging investment in liberty bonds states that our government will require approximately twenty billion dollars annually for war purposes. The total income of the country has been estimated at about forty billion dollars. In other words, continues this publication, every citizen will be expected to contribute, on an average, one half of his entire income to the prosecution of the war, either in the payment of taxes or the purchase of bonds. Contemplate, for a moment, the effect of that on the many manufacturing concerns which are not directly connected with the war. Vast sums will be concentrated in this one line, which formerly went out into all the varied industrial activities of a great nation. Many industries will be demoralized, some will be destroyed, and thousands of business men will be forced to the wall.

## THE PROGRAM OF THE RAILWAY FINANCES

With a full appreciation of just what is in store for the average man let us now consider what the keen, able, far-sighted railroad financiers are trying at this moment to force through Congress, in the name of "patriotism," with just as little debate as possible, in advance of the treacherous times that are to come, and before the great body of our citizens, or their representatives, have paused to look forward into the future, before they have awakened to the real situation which confronts us as a nation. We do not claim that railroad officials have no patriotism. There is no class of men in America that are more patriotic. We simply denounce this constant attempt to increase the net revenues of railway companies under the subterfuge of patriotism. This is patriotic camouflage, nothing more nor less.

Some comprehension of just what the proposed guaranty means can best be obtained by considering a few concrete examples.

J. S. Bache and Company, of New York, have made an analysis of the proposed guaranty for a number of railroad systems. According to their computations, the New York Central will receive 12.4 per cent on its common stock.

During the past six years the stock of the New York Central has never commanded on the market a price as high as 120, and yet we propose to give the equivalent of a government bond, bearing a rate of over 12 per cent while the war lasts, to the New York Central stockholders.

The Bache Company estimates the return on the Pennsylvania stock to be 8.54 per cent; the Chicago and Northwestern 9.27 per cent; the Delaware, Lackawanna and Western 37.31 per cent; and the Reading 17.71 per cent.

The following table, compiled by the statistical department of the Interstate Commerce Commission, shows all of the companies in the United States earning 5 per cent or more on their capital stock. This table states what the various companies will earn on their stock under the three-year guaranty. (This appears in print for the first time in the Minority report of Senator Cummins.)



Road (a)	Capital stock actually outstanding. Average for the three years ended June 30, 1917 (B) (c)	Average net income for the three years ended June 30, 1917 (C) (d)	Average per cent of net in- come to capital stock (d) ÷ (c) (e)
EASTERN DISTRICT			
Pennsylvania R. R. Co. ....	\$199,195,567	\$44,534,939	Per cent 8.92
New York Central R. R. Co. ....	249,676,128	32,367,269	12.96
Balto. & Ohio R. R. Co. ....	210,809,812	12,285,229	5.83
Pennsylvania Co. ....	80,000,000	9,537,859	11.92
Phila. & Reading Ry. Co. ....	42,481,700	10,916,875	25.70
Del., Lack. & Wn. R. R. Co. ....	42,220,400	13,890,560	32.90
Pgh., Cin. Chgo. & St. L. R. R. Co. ....	67,511,723	4,558,593	6.75
Lehigh Valley R. R. Co. ....	60,608,000	7,169,999	11.83
Clev. Cin. Chic. & St. L. Ry. Co. ....	57,027,200	5,048,902	8.85
Michigan Central R. R. Co. ....	18,736,400	3,463,464	18.48
Central R. R. Co. of N. J. ....	27,436,800	5,556,775	20.25
Delaware & Hudson Co. ....	42,502,600	5,437,547	12.79
Phila. Balto. & Wash. R. R. Co. ....	25,571,000	2,941,156	11.50
Pitta. & Lake Erie R. R. Co. ....	31,991,200	7,537,923	23.56
Elgin, Joliet & En. Ry. Co. ....	10,000,000	945,239	9.45
Maine Central Ry. Co. ....	18,199,317	1,605,075	8.82
Buff. Roch. & Pgn. Ry. Co. ....	16,500,000	1,560,021	9.45
Beasemer & Lake Erie R. R. Co. ....	500,000	3,236,080	647.22
Chicago & Erie R. R. Co. ....	100,000	70,449	70.45
Hocking Valley R. Co. ....	10,999,500	1,313,129	11.94
West J. & Seashore R. R. Co. ....	10,317,983	691,139	6.70
Central New E. Ry. Co. ....	8,547,200	717,566	8.40
N. Y. Phila. & Nor. R. R. Co. ....	2,500,000	893,508	35.74
Rutland R. R. Co. ....	9,150,300	575,651	6.29
Bangor & Aroostook R. R. Co. ....	4,079,067	337,808	8.28
Cumberland Val. R. R. Co. ....	5,333,550	1,280,684	24.01
Kanawha & Michigan Ry. Co. ....	9,000,000	991,665	11.02
Lehigh & N. E. R. R. Co. ....	6,000,000	819,722	13.66
Chgo. Terre H. & S. En. Ry. Co. ....	4,300,000	234,761	5.46
Lehigh & Hudson River Ry. Co. ....	1,340,000	374,915	27.98
Monongahela Ry. Co. ....	3,809,333	352,809	9.26
Cincinnati Nn. R. R. Co. ....	3,000,000	268,573	8.95
Port Reading R. R. Co. ....	2,000,000	182,547	9.13
Det. & Toledo S. L. R. R. Co. ....	1,428,000	348,020	24.37
Buf. & Sua. R. R. Corp. ....	7,000,000	496,203	7.09
Staten Is. R. T. Co. ....	500,000	160,119	32.02
Detroit & Mack. Ry. Co. ....	2,950,000	218,976	7.42
Total. ....	\$1,593,322,780	\$182,921,748	11.48

Road (a)	Capital stock actually outstand- ing. Average for the three years ended June 30, 1917 (B) (c)	Average net income for the three years ended June 30, 1917 (C) (d)	Average per cent of net income to capital stock (d) ÷ (b)
<b>SOUTHERN DISTRICT</b>			
Illinois Central R. R. Co.....	\$109,288,114	\$12,383,882	11.33
Louisville & Nashville R. R. Co.....	72,000,000	12,056,800	16.75
Norfolk & Western Ry. Co.....	138,580,967	17,342,810	12.51
Chesapeake & Ohio Lines.....	62,786,000	5,848,431	9.31
Atlantic Coast Line R. R. Co.....	68,754,700	7,424,004	10.80
Central of Georgia Ry. Co.....	20,000,000	1,878,570	9.39
Nashville, Chattanooga & St. Louis Ry. ....	15,994,831	2,175,426	13.60
Mobile & Ohio R. R. Co.....	6,016,800	888,067	14.76
Cincinnati, New Orleans & Texas Pacific Ry. Co.....	5,443,400	2,448,928	44.99
Florida East Coast Ry. Co.....	10,833,333	1,090,321	10.06
Alabama Great Southern Ry. Co.....	11,210,350	1,364,246	12.17
New Orleans & North Eastern R. R. Co....	6,000,000	646,449	10.77
Richmond, Fredericksburg & Potomac R. R. Co.....	4,315,067	979,486	22.70
Georgia Southern & Florida Ry. Co.....	3,768,000	232,186	6.90
Charleston & Western Carolina Ry. Co. ....	1,200,000	230,036	21.67
Gulf & Ship Island R. R. Co.....	7,000,000	373,070	5.33
Alabama & Vicksburg R. R. Co.....	2,100,000	360,784	17.18
Washington & Southern Ry. Co.....	4,000,000	348,641	8.72
Athens & West Point R. R. Co.....	2,463,600	292,922	11.89
Western Railway of Alabama.....	3,000,000	251,851	8.39
<b>Total.....</b>	<b>\$554,745,062</b>	<b>\$68,636,910</b>	<b>12.37</b>

Road (a)	Capital stock actually outstand- ing. Average for the three years ended June 30, 1917 (B) (e)	Average net income for the three years ended June 30, 1917 (C) (d)	Average per cent of net income to capital stock (d)+(e) (c)
<b>WESTERN DISTRICT</b>			
Atchison, Topeka & Santa Fe Ry. Co.....	\$332,323,877	\$32,230,021	9.70
Southern Pacific Co.....	276,725,239	17,933,726	6.60
Chicago, Milwaukee & St. Paul Ry. Co. ....	233,335,167	14,336,613	6.15
Chicago, Burlington & Quincy R. R. Co..... (G)	110,839,100	24,444,045 (G)	22.05 (G)
Chicago & Northwestern Ry. Co.....	157,591,852	16,040,515	10.18
Great Northern Ry. Co.....	249,361,866	24,021,887	9.63
Northern Pacific Ry. Co.....	347,283,000	24,287,781	9.87
Union Pacific R. R. Co.....	321,836,100	31,018,338	9.34
Minneapolis, St. Paul & Ste Marie Ry..... (G)	37,810,200	4,571,790 (G)	12.09 (G)
Oregon Short Line R. R. Co.....	100,000,000	9,381,016	9.38
Texas & Pacific Ry. Co. (Rec.).....	32,755,110	2,548,330	6.58
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.....	29,815,000	3,854,452	9.57
Duluth, Missabe & Northern Ry. Co. ....	4,112,500	4,693,088	114.12
El Paso Southwestern Co..... (G)	25,000,000	2,190,198 (G)	8.78 (G)
Houston & Texas Central R. R. Co.....	10,000,000	1,089,368	10.88
Duluth & Iron Range R. R. Co.....	5,333,333	3,040,987	38.27
Fort Worth & Denver City Ry. Co.....	9,243,800	1,297,029	14.03
Panhandle & Santa Fe Ry. Co.....	804,500	389,097	64.37
St. Louis, Brownsville & Mexico Ry. Co.....	500,000	263,544	52.71
Chicago, Rock Island & Gulf Ry. Co. .... (G)	469,000	83,685 (G)	17.84 (G)
Bingham & Garfield Ry. Co.....	6,171,667	1,405,681	22.78
Louisiana Western Ry. Co.....	3,360,000	802,684	23.89
Nevada Northern Ry. Co.....	2,000,000	879,907	43.99
Vicksburg, Shreveport & Pacific Ry. Co. ....	4,999,300	299,634	5.99
Houston East & West Texas Ry. Co.....	1,920,000	234,199	12.20
Cripple Creek & Colorado Springs Ry. Co. ..	757,000	171,619	22.67
Colorado & Wyoming Ry. Co.....	100,000	162,636	162.64
Wichita Valley Ry. Co.....	1,020,000	117,936	11.56
Arizona & New Mexico Ry. Co.....	3,770,000	337,314	8.58
Total.....	\$2,210,635,811	\$220,076,073	9.96

An important objection has been made to statements concerning the guaranteed net income on capital stock. Net income under the Commission's system of accounting includes not only earnings from operation but income from outside investments. The government does not guarantee these outside revenues. Another objection which can be made to the computations quoted above is that they fail to show system figures. A parent company may have several subsidiaries that do not earn much on their outstanding capital stock.

# ERRATA NOTICES

On Page 93 of Volume 165 of *The Annals* for March, 1918, the heading of last column of table should read as follows: "Average per cent of net income to capital stock (d) ÷ (e)" instead of: "Average per cent of net income to capital stock (d) + (e)."

Table on page 94 should read as follows:

Road	Capital stock actually outstanding. Average for the three years ended June 30, 1917 (B) (e)	Average net income for the three years ended June 30, 1917 (C) (d)	Average per cent of net income to capital stock (d) ÷ (e) (e)
<i>Per cent</i>			
Athlison, Topeka & Santa Fe Ry. Co.	\$332,323,577	\$32,230,091	9.70
Southern Pacific Co.	272,725,239	17,983,726	6.60
Chicago, Milwaukee & St. Paul Ry. Co.	233,235,167	14,336,613	6.15
Chicago, Burlington & Quincy R. R. Co.	110,539,100	24,444,045	22.05
Chicago & Northwestern Ry. Co.	157,591,852	16,040,315	10.18
Great Northern Ry. Co.	249,361,866	24,021,687	9.63
Northern Pacific Ry. Co.	247,982,000	24,287,781	9.87
Union Pacific R. R. Co.	321,835,100	31,018,328	9.64
Minneapolis, St. Paul & Ste Marie Ry.	37,810,200	4,571,790	12.09
Oregon Short Line R. R. Co.	100,000,000	9,381,016	9.38
Texas & Pacific Ry. Co. (Rec.)	38,755,110	2,548,330	6.58
Chicago, St. Paul, Minneapolis & Omaha Ry. Co.	29,815,000	2,854,452	9.57
Duluth, Missabe & Northern Ry. Co.	4,112,500	4,603,088	114.12
El Paso Southwestern Co.	25,000,000	2,190,198	8.76
Houston and Central Texas R. R. Co.	10,000,000	1,088,368	10.88
Duluth & Iron Range R. R. Co.	5,333,333	2,040,987	38.37
Fort Worth & Denver City Ry. Co.	9,243,800	1,297,029	14.03
Panhandle & Santa Fe Ry. Co.	604,500	389,097	64.37
St. Louis, Brownsville & Mexico Ry. Co.	500,000	263,544	52.71
Chicago, Rock Island & Gulf Ry. Co.	469,000	83,695	17.84
Bingham & Garfield Ry. Co.	6,171,667	1,405,681	22.78
Louisiana Western Ry. Co.	3,360,000	802,684	23.89
Nevada Northern Ry. Co.	2,000,000	879,907	43.99
Vicksburg, Shreveport & Pacific Ry. Co.	4,999,300	299,634	5.99
Houston East & West Texas Ry. Co.	1,920,000	234,199	12.20
Cripple Creek & Colorado Springs Ry. Co.	757,000	171,612	22.67
Colorado and Wyoming Ry. Co.	100,000	162,636	162.64
Wichita Valley Ry. Co.	1,020,000	117,936	11.56
Arizona & New Mexico Ry. Co.	2,770,000	237,614	8.58
Total	\$2,210,638,611	\$220,076,073	9.96



In order to meet both of these objections and to ascertain the real effect that such modifications would have on the results, we have compiled the statistics for the railroad systems handling 72 per cent of the traffic in the eastern district. In column A we show the average dividend rate on the system; in column D the average return, including income from outside sources as well as revenues from operation during the past three years; in column F we have eliminated all income from outside operations. These railroad systems under the government guaranty will be able to pay all of their operating expenses, taxes, interest on funded and unfunded debt, rentals, leases, etc., and have enough left out of earnings from operation alone, to equal an average of 10 per cent on all their capital stock outstanding in the hands of the public. In addition to this government bond for 10 per cent during the war, these companies will have large revenues from outside sources. During the past three years, this outside income has averaged over \$30,000,000 a year. This table has been compiled from the exhibit prepared by the eastern railroads in the Fifteen Per Cent Case before the Interstate Commerce Commission. (See table on p. 96.)

In contrast with the foregoing statements showing the situation on American railroads, under the proposed government guaranty, we present a somewhat similar table (p. 97) showing the government guarantees on the roads handling 86.60 per cent of the traffic in Great Britain. These earnings should be further reduced by reason of the modification caused by the increased wages, a portion of which the railroad companies have assumed.

Summarizing the situation, it may be stated that the railroad bill now pending before Congress proposes the following guarantees made on behalf of the government of the United States: (1) to return the properties at the end of the period of government control in as good condition as that at the time they were taken over; (2) to loan the railroads all the money necessary for betterments and improvements, probably at the rate on government bonds; (3) to shield the large prosperous railroad systems from all future increases in the cost of labor and supplies while the war lasts; (4) to protect these larger railroads from all financial hazards of the war which will threaten the very life of many industries, and possibly wreck many railroads that will not be granted a government guaranty; (5) and to guarantee the larger railroads, annually,

STATEMENT OF THE NET INCOME AND CAPITAL STOCK, EASTERN RAILROADS, YEAR ENDING JUNE 30,  
1917

Name of road	1917 dividend rate (system avg.), (%)	Capital stock outstanding in 1917	Average net income three years 1915-1917	Average return on 1917 capital stock (%)	Average net income less other years 1915-1917	Average net guaranteed return (%)
	A	B	C	D	E	F
Bessemer & Lake Erie R. R.....	11.36	\$12,498,850	\$3,515,494	28.12	\$3,453,031	27.63
Central R. R. of New Jersey.....	11.68	28,710,800	5,597,651	19.49	4,934,079	16.14
Delaware & Hudson Co.....	8.82	56,855,500	6,469,916	11.38	4,428,769	7.79
Delaware, Lackawanna & Western R. R....	12.83	87,048,638	16,545,849	19.01	11,824,622	13.58
Lehigh Valley R. R.....	9.76	62,110,998	7,026,317	11.31	3,846,914	6.19
New York Central System.....	5.50	369,230,457	49,425,960	13.39	39,371,056	10.66
Norfolk & Western Ry.....	7.16	143,397,200	17,341,467	12.09	16,520,923	11.52
Pennsylvania R. R. System.....	6.48	620,588,186	66,418,510	10.70	54,379,661	8.76
Reading System.....	7.10	98,558,337	11,466,252	11.63	11,240,132	11.40
Chesapeake & Ohio Ry.....	4.00	62,786,000	5,844,756	9.31	4,859,525	7.74
Buffalo Rochester & Pittsburgh R. R....	6.00	16,500,000	1,560,021	9.45	1,478,723	8.96
Lehigh & New England R. R.....	8.00	6,000,000	819,477	13.66	784,957	13.08
Hocking Valley Ry.....	4.00	10,999,500	1,313,128	11.94	1,279,985	11.64
Lehigh & Hudson River Ry.....	12.00	1,340,000	374,413	27.94	369,252	27.56
Total.....	6.94	\$1,570,630,466	\$193,719,211	12.29	\$158,472,228	11.05

NOTE: The foregoing table has been compiled from the exhibits offered by the railway companies in the Fifteen Per Cent Case, last November,—the case being tried before the Interstate Commerce Commission.

We show the rate of return which was earned by fourteen of the principal railroad systems in the Eastern District. These roads handled 72 per cent of the traffic in said District last year. Net income includes income from operation as well as that which is received from outside investments, known as "other income." First, we show the ratio this factor, known as net income, bears to the capital stock outstanding. Second, we have subtracted from the net income, all income from outside sources. This leaves only the earnings derived from operation of the railroad property after all interest charges are paid. We then show the rate that this net income from operation bears to the capital stock.

\* This percentage differs slightly from that given before the Congressional Committee recently, as the percentage here is based on



## RAILWAYS IN UNITED KINGDOM WHOSE GROSS RECEIPTS FOR YEAR 1913 EXCEEDED £1,000,000

Name of road	Gross receipts £	Ordinary stock	Preference stock	Guaranteed stock	Total stock (a)	Dividends on ordinary stock	Dividends on preference and guaranteed stock	Total dividends	Rate of dividend (%)	Net income	Fixed charges	Net income less fixed charges	Rate of return (%) (b)
Great Central	5,979,558	10,658,000	17,185,428	2,352,061	31,225,509	.....	866,076	866,076	2.77	2,218,221	1,332,885	885,336	2.77
Great Eastern	6,012,142	15,362,586	14,731,708	6,094,627	36,189,221	384,072	835,228	1,209,300	3.34	2,173,230	960,365	1,212,865	3.34
Great Northern	6,742,119	22,454,250	19,759,520	3,435,740	45,649,510	788,538	910,910	1,699,448	3.72	2,463,016	700,189	1,762,827	3.86
Great Western	15,431,412	36,695,210	11,920,348	25,555,191	74,186,749	2,854,431	1,574,377	4,428,808	5.61	5,920,034	1,574,607	4,345,427	5.87
London and York	6,598,150	18,821,470	29,104,816	2,996,012	50,922,298	846,996	1,019,267	1,866,263	3.60	2,602,111	713,511	1,888,600	3.76
London and North Western	16,326,621	42,890,095	27,873,631	15,100,406	85,864,132	3,002,296	1,715,962	4,721,258	5.50	6,334,586	586,021	5,748,565	5.63
London and South Western	5,414,019	22,189,814	18,700,226	797,960	41,688,030	851,199	738,526	1,589,725	3.51	2,190,502	378,445	1,812,057	3.53
London Brighton & South Coast	3,534,115	10,447,085	10,121,672	1,955,860	22,524,617	548,472	603,876	1,152,348	5.12	1,534,911	378,445	1,156,466	5.13
Midland	15,120,136	78,195,397	62,968,974	18,098,560	160,272,931	2,636,194	2,099,831	4,736,025	2.94	6,262,728	1,434,787	4,827,941	3.07
North Eastern	11,318,126	32,026,605	16,273,797	8,503,205	56,811,697	2,242,142	991,046	3,233,188	5.69	4,454,968	914,609	3,540,359	6.23
North Staffordshire	1,055,978	3,594,650	3,317,453	1,170,000	8,082,133	179,732	158,024	337,756	4.15	441,285	80,071	361,214	4.28
South Eastern and Chatham Railway	4,890,559	.....	7,878,532	12,313	19,260,427	.....	331,107	331,107	1.72	816,193	483,253	332,940	1.73
Companies' Managing Committee: London, Chatham and Dover	.....	11,259,282	12,260,365	1,784,300	24,110,417	401,969	533,940	935,909	3.88	1,416,060	483,257	932,803	3.87
South Eastern	.....	10,049,230	.....	.....	10,049,230	.....	.....	.....	.....	.....	.....	.....	.....
Total England and Wales	94,281,981	314,653,994	253,155,820	88,587,245	656,400,159	14,166,341	12,641,490	26,807,831	4.04	28,837,867	11,186,702	17,651,165	4.22
Galeries	5,120,185	35,569,256	14,526,437	9,288,184	59,393,947	646,211	965,153	1,611,404	2.72	2,324,041	797,431	1,526,610	2.74
Gloucester and South Western	2,012,727	20,654,790	20,400,001	2,260,450	43,715,238	314,052	1,078,823	1,392,875	3.02	833,565	229,969	603,596	3.02
North British	8,254,507	31,579,157	27,875,087	.....	49,158,144	437,261	1,078,823	1,516,084	3.06	2,437,262	587,723	1,849,539	3.19
Great Northern of Ireland	1,191,286	4,049,989	1,749,005	860,270	6,660,294	242,997	104,780	347,777	5.21	437,031	103,768	333,263	5.28
Great Southern and Western	5,479,400	.....	1,696,765	2,994,184	10,077,749	266,276	184,196	450,472	4.47	716,016	213,262	502,754	4.96
Total United Kingdom	113,600,537	392,966,986	304,198,105	102,581,403	802,066,494	16,073,338	15,279,281	31,352,729	3.91	43,695,407	12,800,297	30,895,110	4.04
Per cent of gross receipts of all railways in United Kingdom	96.60	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

\* Includes interest on loans, debenture stock and miscellaneous fixed charges.

† Gross receipts of all railways as follows: England and Wales, £109,908,364; Scotland, £13,642,742; Ireland, £4,023,167; Total, £127,574,273.

Authority, Railway Returns of the United Kingdom for the Year, 1913

sums that will be sufficient to pay all their operating expenses, taxes, interest, dividends and surplus equal to that which they have earned during the years 1915 to 1917 inclusive, the most prosperous three-year period in their entire history.

It is also proposed, as stated by the author of the major portion of the bill, that the shippers, who will have their own burdens to carry during this perilous time, will be expected to make up any deficit of the government in the guaranty made to the railroads.

We can snuff out the life of our boys in the trenches. We can wreck many industries. We can blast the business of the short line, the poor road. But when it comes to these rich, powerful corporations, the big companies, the great railroads, we heroically announce that we are going to protect them from the effects of the war. And we do all this in the name of patriotism.

To the Burlington Railroad we say, "You now have a stock paying a regular dividend of 8 per cent. While the war lasts please accept this 22 per cent government bond in lieu of that railroad stock. We not only guarantee you this 22 per cent annually on your stock; but we guarantee to return the principal in full in this manner—after the war is over we solemnly guarantee to give back your property in just as good a condition as we take it." This has all the essential elements of a 22 per cent government bond. While the war lasts the government guarantees the annual payment on the stock, and at the end of the war the government guarantees to return the property in full. Here you have the payment of the principal and the interest. Not only do we guarantee to the Burlington annually that 22 per cent on its capital stock, but we also guarantee, with all the wealth and resources of the United States government back of the pledge, that we shall pay all interest charges on all its funded and unfunded debt, maintain its properties adequately and efficiently, and present to the Burlington Railroad an absolute government credit, enabling the company to borrow all the money it may need. We tell the Burlington Railroad to go ahead, rehabilitate and improve its property out of the public treasury, while many other industries are being prostrated; and then don't forget to take that little check annually for 22 per cent. We do all this in the name of patriotism.

It has been suggested that the payment of these large earnings to the railroads is necessary to facilitate the sale of government

bonds. How will it help the sale of 4 or 4½ per cent government bonds to give a government guaranty to railroad stocks amounting to 10 per cent annually? It is axiomatic that the higher you make the prevailing rate on other securities, the more difficult will it be to sell government bonds at a lower rate. Where is there any reason for thinking a guaranty of 10 per cent instead of 6 or 7 per cent on railroad stocks will facilitate the sale of government bonds? Why should the stockholder part with the 10 per cent security in order to purchase a 4½ per cent government bond? The higher you make the earnings on railroad securities, the more difficult will it be to persuade the railroad stockholder to part with his security. The logic involved in advocating a 10 per cent or 20 per cent return on railroad stock in order to help the sale of 4 or 5 per cent government bonds is a charming exhibition of the usual statesmanlike stupidity which governs our public activities.

Our first task is to win the great war, but that cannot be used to throw dust in our eyes on matters of justice as between the citizens of this country. There are some offenses that cannot be committed with impunity, even though they be done in the name of patriotism. We are patriots first, last, and all the time; but we are not fools. There is such a thing as camouflage in the demagogic panegyrics of the politician who does everything, big and little, right or wrong, in the name of patriotism.

#### TERMINATION OF GOVERNMENT CONTROL

The measure originally presented provided no definite time for the termination of the government operation of our railroads. The Senate Committee amended this, limiting the time to eighteen months after the termination of the war. The House Committee has amended the bill, limiting the time of operation to a period of two years after the war. The possible effect of no limit on the period of government operation has precipitated vigorous discussion from both the friends and opponents of government ownership. Various and conflicting claims have been made. Whatever policy is subsequently adopted, it is quite essential that a substantial period shall elapse during which necessary legislation can be enacted to meet the situation then existing and providing for the necessary accounting. There is no doubt but what Congress will limit the period of government operation. As the time limit approaches, the

entire subject of government ownership versus private ownership will be forced into prominence.

#### JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION

Practically everyone recognizes the necessity for concentrating the operation of American railroads in the hands of the President during the emergency now confronting the nation. Another question, however, has arisen. This relates to the jurisdiction of the Interstate Commerce Commission over rates and charges of the railway companies. At the present writing, the committees in the two houses of Congress are divided on this proposition; the Senate Committee recommended a bill giving power of initiating rates into the hands of the President, and leaving the jurisdiction with the Commission to finally determine the reasonableness of any and all changes under the Act to Regulate Commerce and the amendments thereto. The House Committee has declined to accept this amendment to the bill as originally proposed. This is but a passing phase of a contest that has been carried on for many years to cripple, and if possible, to destroy the Commission. The shipper like the railroad will suffer from the inconveniences and hardships occasioned by government operation interfering with the ordinary movements of traffic, and giving priority to those commodities most essential to the efficient prosecution of the war. It can safely be said that both the railroad and the shipper have patriotically consented to this interference, without objection.

However, on matters of compensation a different situation exists. There is no necessary connection between the efficient operation of the railroad and the determination of the proper compensation to be paid by the government to the railway company. There may be some relation between the two, but it is incidental, and not of substantial importance. The railway company has a right to a full hearing before a disinterested tribunal if an agreement cannot be effected between the government and the company, and no one has even suggested that this right should be interfered with by the so-called "war power." The shipper claims that his rights to a full hearing relative to the compensation to be paid by the shipper are just as sacred as are those involving the compensation to be paid to the railroad. The justice of the demand on behalf of the shipper to a full hearing has been forcibly stated by the Supreme Court in

*Interstate Commerce Commission v. Louisville, etc.* (227 U. S. 88), wherein the following language appears:

But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of section 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parts. *Interstate Commerce Commission v. Baird*, 194 U. S. 25. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding. *Interstate Commerce Commission v. Louisville & Nashville Railroad*, 227 U. S. 88, 93.

We have had the Interstate Commerce Commission for thirty years. During this period our railroads have prospered. The best evidence of this fact is that the companies handling the bulk of the traffic in the nation have been able to pay liberal dividends, and the net revenues of the American railroads as a whole during the past three years have exceeded the net revenues of any other like period. This fact has been conclusively established beyond controversy. During the next few years the Commission will be of greater importance to the shipper than during any other like period in our history.

#### ADVANCED FREIGHT RATES

There are some who are advocating a general advance in freight rates in the United States, should it become necessary to make up any deficit in the amount guaranteed to American railroads under the provisions of the bill now pending. Before the government should adopt such a policy there are some facts worthy of serious consideration. At the outset it must be remembered that such a course of action would be diametrically opposed to that which has been adopted in Great Britain.

The expedited special service required by the government in the movement of troops, munitions and other war supplies will serve to discommode other traffic, creating embargoes, confusion, extended delays, forcing other trains, both passenger and freight, to give way to the movement of trains carrying war supplies. No one is objecting to these inevitable hardships, but attention is called to the fact that the government is thereby securing expedited special services for ordinary rates. It would be very difficult to estimate the actual cost of this kind of service and the attendant confusion occasioned to other traffic. This extra service is in all respects a governmental activity and the burden should be borne by the government,—by the public generally—not by the shipper. If every shipper were able to pass on the cost to the consumer it might not work any hardship to advance the freight rates to take care of these extra costs; but in actual practice we find that some jobbers and some manufacturers in certain lines of industry in the cities, are able to pass on the burden to the consumer; but, on the other hand, many jobbers, manufacturers and producers have to absorb the larger portion of any advance in freight rates that is made. This is true of the oil industry because the chief competitor of the independent is enabled to ship his product largely through pipe lines. The price on grain is generally the price at the market less the transportation charge from point of origin. The same is true of the livestock traffic. Even where the shipper is able to pass on the burden to the consumer there are certain objections. A tax (and this has all the essential elements of a tax) pro-rated in that manner compels the man who buys the necessities of life to bear the heavy part of the load and it is not apportioned in accordance with the ability to pay the tax. Many times the manufacturer or jobber uses such an increase as an excuse for levying an additional charge upon the public for the common necessities of life amounting to several times the actual increased cost.

We should keep clearly in mind the distinction between the ratepayer and the taxpayer. The shipper is perfectly willing and is glad to bear his fair share of the burden of the cost of this war. He could rightfully object, however, to any program which forces him to bear his share and, in addition thereto, to carry other people's burdens. These extraordinary costs of operation occasioned by confusion, congestion, etc., are caused by the government; they

are a part of the war program. This extra cost should be borne by the taxpayer and not by the ratepayer. Of course the shipper will then bear his fair share of the burden.

The shipper will have to bear his own increases in the cost of labor and supplies along with the rest of the people. It would seem unfair to compel him also to bear the increased cost of labor and supplies of the railroad companies occasioned by the war. The reason we say to the railroads that we will protect them from these increased expenses is because we consider our transportation system an essential governmental agency at this crucial time. We do it as a matter of public policy. It is a burden assumed by the government and the citizens as a whole should share in that burden, instead of forcing it upon a relatively small group of shippers scattered throughout the country. As previously stated what we suggest is precisely the policy that has been adopted in Great Britain. It is sound economically, morally, and legally.

#### GOVERNMENT OPERATION IN GREAT BRITAIN

The essentials of the British plan for the operation of railroads during the war may be briefly described as follows:

1. A committee of thirteen, including the president of the Board of Trade and the general managers of the leading British railroads are in active control of the railways in England, Wales and Scotland, under authority of the Act of 1871.

2. The government undertakes to maintain the properties on a standard similar to that existing prior to the war, except that a certain percentage, said to be 12½ per cent, is added to the maintenance allowances of the pre-war period, because of the extra cost and wear and tear occasioned by high prices and the extraordinary use now demanded of the railroads.

3. The government guarantees the net income for the year 1913 less an amount equal to one-fourth of the first wage bonus granted to labor, the total reduction amounting to approximately £1,000,000. (The original reduction was equal to the amount by which their net revenues during the first seven months of 1914 fell below the corresponding period of 1913. This condition or proviso was stricken out and the reduction named above was substituted therefor.)

4. No payment is made for the movement of government troops or munitions, it being presumed that the payment of the



difference between the guaranty and the receipts from other traffic is sufficient compensation for this service.

5. Very large and substantial increases in wages have been paid to labor. The first advance was divided as follows: the government assumed three-fourths of the amount and the railway companies assumed the other one-fourth by reducing their guaranteed return to that extent, as described above. All subsequent advances in wages have been assumed by the government. There has been no general advance in freight rates during the war. In 1913 there was an increase of approximately 4 per cent, which it is said became operative at a somewhat later date. This was about the time the 5 per cent was granted by the Interstate Commerce Commission on 50 per cent of the traffic in the eastern district.

There are certain essential differences in the method adopted in Great Britain and that contemplated in the United States in connection with the taking over of the railroads.

In Great Britain the dividends average much less than the dividends on railway stocks in this country. In Great Britain the average surplus (as well as the *typical* surplus) is approximately one-half of 1 per cent. In the United States the average surplus above dividends for the year ending June 30, 1917, was approximately 4 per cent. In other words, the surplus in the United States is approximately eight times as great as the surplus in Great Britain. The guaranty of the net income for 1913 in Great Britain with the subsequent modification that was adopted was not even sufficient to insure the payment of dividends on the principal railroads of the country. We here present an extract from a statement compiled by the Legislative Reference Department of the Congressional Library, the document being prepared by Mr. Gilbert Hirsch.

Before the terms were made public, a report had got out that the basis of compensation was to be a government guarantee of the existing dividend. The Investors' Review had it that the dividend average for the three preceding years was to be the basis of this guarantee.<sup>2</sup>

Even after the terms became known, it was popularly assumed that they involved a guarantee that the government would give the railway shareholders every existing dividend.<sup>3</sup> The Railway News stated, shortly after the announce-

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<sup>2</sup> September 19, 1914, p. 319.

<sup>3</sup> Mr. Healy in the House of Commons, May 3, 1917, 93 H. C. Deb., pp. 564-565.

ment<sup>4</sup> that shareholders would get dividends at rates approximately equal to those of 1913. And the Economist declared, over a year later<sup>5</sup> that dividends are more or less guaranteed under the arrangement with the government. There has, however, been some falling off in the dividend rate during the war.<sup>6</sup>

The following statistics have been prepared by James H. Oliphant & Co., of New York, and show the situation on nine of the leading railroads in Great Britain.

#### WAR-TIME DIVIDENDS OF BRITISH RAILWAYS

[There follows a selected list of the common or ordinary stocks of several of the most important British railways, together with their dividend records, 1913 to 1916, inclusive.]

	1913	1914	1915	1916
	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Caledonian.....	3½	3½	3½	3½
Great Eastern.....	2½	2½	2½	2½
Great Western.....	6½	6	5½	5½
Great Northern.....	3	2½	2½	2½
London & North Western.....	7	6	6	5
London & South Western.....	5½	5½	5½	7
Midland.....	4½	4	4	4
North Eastern.....	7	6½	6½	6½
South Eastern.....	4	3½	3½	3½
Average.....	4.82	4.45	4.40	4.58

(From War's Effect on British Securities, James H. Oliphant & Co., New York, p. 25.)

In the United States, however, we find the guaranteed net income, after the payment of all interest charges, will very much more than insure the payment of dividends and a large surplus for all the principal railroads of the nation.

The guaranteed return for the railroads in the United States, not in toto, but in proportion to the capitalization outstanding, is approximately \$250,000,000 greater than the return guaranteed to British railroads.

#### NO INCENTIVE FOR EFFICIENCY

The gravest objection to the proposed legislation now pending in Congress is that it leaves practically no incentive for efficient operation. During this transition period we will have neither

<sup>4</sup> November 21, 1914, p. 683.

<sup>5</sup> February 26, 1916, p. 398.

<sup>6</sup> See below, sec. V, B, 2.

complete private control nor government control in actual practice. The government has the right of unlimited interference in operation, the companies retain the title to the properties, and their employes retain actual physical control of the operation of the plant. During this transition period it would be well if there were some strong incentive for efficient operation. Of course the spirit of patriotism and the desire to do one's duty in times of either peace or war prompt the activities of practically all of us. And yet, it needs but a moment's reflection to recall a very substantial difference in the attitude of the employes for a company at competitive points and at non-competitive points. The stimulus of greater financial reward needs no argument to support it; everybody recognizes it in practically every branch of human industry—except possibly in the ministry and even there the same human stimulus is used constantly. The magic wand of government operation may transform railroad stocks into government bonds, but it will not change railroad managers and engineers into angels; they are still human beings.

The government will present this guaranteed return to the railway companies without any regard to the work that they may perform in the future. They get their 8 per cent or 50 per cent on their stock whether the service they render is poor, good or excellent. And the temptation to discredit government operation will be a powerful factor, although it may be followed unconsciously only.

A suggested compromise might be made that the companies shall be guaranteed their usual interest and dividends, but that they shall have no surplus, except as they may earn it. This surplus should not be capitalized; but the value of improvements to the property in order to sustain the full value of outstanding securities is inestimable and is recognized by all practical railroad men.

#### CAPITALIZING SURPLUS

The measure now pending before Congress proposes to capitalize the surplus earnings of railway companies. The authors of this measure are asking Congress to reverse a principle which has been adopted unanimously by the Interstate Commerce Commission, in a decision written by Mr. Secretary Franklin K. Lane, while he was a member of that tribunal. They are asking Congress to adopt into law a doctrine which Mr. Lane branded as unjust.

The authors of this measure are asking Congress to adopt into law a doctrine which two of the leading railroad presidents in the nation have stated on the witness stand would be unfair to the public.

The railroad industry is peculiar among the enterprises of the country. By state statutes, acts of Congress and city ordinances we are constantly requiring railroads to build improvements which bring little or no additional revenue, such as elevated tracks, more ornamental depots, etc. They have asked us to help build these things which we require, by allowing them a large surplus over and above reasonable dividends, on condition that they will not capitalize these surplus earnings.

Mr. Ripley, the president of the Santa Fé, testified under oath on the witness stand before the Interstate Commerce Commission in 1910 as follows:

MR. LYON: But, take the condition of a road, we are assuming as the case where you have a dividend of \$10,000,000 and you collect from the public an additional \$10,000,000, and that pays for all necessary improvements demanded by that particular line of railway.

MR. RIPLEY: Well, it might.

MR. LYON: I said assume that it would.

MR. RIPLEY: Yes.

MR. LYON: Then in the future in determining the rate you would not consider the value of that property acquired through the \$10,000,000 taken from the public previously for that purpose?

MR. RIPLEY: No.

Again referring to this money put into the property out of earnings Mr. Lyon asked:

It is their money and they have invested it, and you would not expect any return upon it?

To this Mr. Ripley again replied that he would not.

Mr. Willard, president of the Baltimore and Ohio, and chairman of the committee representing the eastern railroads, testified under oath on the witness stand before the Interstate Commerce Commission in 1910 as follows:

COMMISSIONER LANE: None of your surplus should be capitalized, as I understand you to say?

MR. WILLARD: None of the surplus that has been spent so far on the Baltimore and Ohio has been capitalized and in my opinion it should not be; and when the surplus that I speak of—the 50 cents for each dollar that I speak of which

should be put in the property in each year—is spent, it should not in my opinion be capitalized. My thought is that at least that much money should be spent on the property each year to afford a proper basis of support for the existing securities.

The Interstate Commerce Commission in their unanimous decision in the Advanced Rate Cases of 1911, stated, in the language of Mr. Secretary Franklin K. Lane, the following:

There is no justification for the investment of surplus, if it is to have the effect of increasing the rates upon the shipper over the original lines. If the theory is to be recognized that by increasing the value of their property, by putting back operating revenues into the property a carrier may as a legal right increase rates, then the shipper is worse off each time he pays a rate which yields a revenue over and above a reasonable return upon the original investment.<sup>7</sup>

This measure now pending, and which may become law, repudiates the doctrine which has been formally adopted by the Commission, with the approval of the leading railroad witnesses, in a case where that very proposition was squarely at issue, and in a case in which practically all the railroads of the country were parties. The authors of this measure desire to make the shipper pay freight rates adequate to prevent any deficit under government operation, and they desire to guarantee a return on all improvements whether built out of new money or out of earnings, whatever the source may be. If that principle is adopted by Congress it will cost the consumers and producers of this nation almost \$200,000,000 annually; and it will be in defiance of what the Commission and the railroad officials themselves have said is just.<sup>8</sup>

#### CONCLUSION

The railway companies retain title to their properties, and retain the actual control in practical operation. We protect the

<sup>7</sup> Senate Document, 61st Congress, pp. 79-80.

<sup>8</sup> *Western Advanced Rate Case*, 20 I. C. C. 307, 342.

<sup>9</sup> In partial recognition of the principles discussed in this article it is now quite probable that Congress will pass two amendments to the measure as originally proposed: (1) leaving final jurisdiction over rates with the Interstate Commerce Commission, and (2) providing that the compensation shall not be increased in order to pay a return on improvements built out of surplus during the period of government operation. However, unless further amendments are adopted, the Commission will lose its power of suspending rates pending investigation, the improvements built out of surplus during former years will be capitalized, and the enormous earnings described in the text will be guaranteed by our government to this favored industry.

carriers from the effect on their revenues resulting from the diversion of traffic; but we also shield them from other hazards. If labor becomes scarce, or wages exorbitant, it will not have any effect whatever on the carriers' revenues. If they need more money to put into the plant, we guarantee to furnish it. If repairs cannot be made, we furnish the money to do it later.

If the carrier needs more high-priced materials, we furnish them, and at the same time preserve their net earnings, sacred and untouched, on that high plane they reached in the most prosperous three-year period they ever saw. Other industries do not get this protection. But the railroads are rich and powerful. They own so much property everywhere and control so many newspapers and magazines.

Other industries may feel the blighting effect of the war, and suffer—the railroads will be shielded from all that. With the mighty arm of the great government we select the railroad stockholder from out of the masses of the people. We select this two-thirds of 1 per cent of our population and tell them that they shall go through this terrible ordeal of war absolutely harmless. Others may perish, but these rich powerful railroads shall continue to revel in the greatest prosperity they ever witnessed in all their history.

By the fiat of government we will suddenly transform seventeen thousand million dollars of railroad stocks and bonds into government bonds. Not only that, but we will capitalize all their surplus earnings, although the Supreme Court and the Interstate Commerce Commission, the two highest tribunals in the land, have refused to sanction such a doctrine. We are asked to capitalize the surplus of these railroads although Mr. Ripley of the Santa Fé, and Mr. Willard of the Baltimore and Ohio, on the witness stand under oath, stated that they should not be capitalized.

Brave, true, noble patriots—willing to sacrifice their time and their property, providing of course that they get more for it than ever before. What an inspiring spectacle to give the rest of the country! And what a noble, happy thought it was to select the railroads at this time of trial and sacrifice to inspire us with patriotism. The cold chill that will go out among our people when these facts are really known will be something alarming. Such shortsighted policies as these will but hasten the day of reckoning for American railroads.

In dealing with these questions of large moment, we must have a care for we are adopting principles that will control the operation of the second greatest industry in the nation during the most critical time in our history, except only for the period of the Civil War. And these conclusions that we reach will have a profound effect on any subsequent purchase or regulation of these vast properties. This is not a time for the abandonment of those principles which we have found to be wise and just. In venturing out into the new and the unknown it is well to cling close to the wisdom acquired by the slow process of the experience of the past. In that way, and that way alone, can true progress be accomplished and justice be rendered to all parties.



## **RAILROAD SECURITY ISSUES UNDER GOVERNMENT OPERATION**

**BY THOMAS CONWAY, JR., PH.D.**

Railroad securities make up a large part of the assets of banks, life insurance companies, of the investments of trust estates and private individuals. The securities of our railroads, until the outbreak of the European War, were held in large amounts by foreign owners. As a result of the liquidation of these European holdings; the attitude of the Interstate Commerce Commission and other regulatory bodies towards the railroad rate problem; and the liquidation of railroad securities by American investors desiring to escape heavy war taxes by shifting their investments to government bonds, the tendency of the market price of railroad stocks and bonds within recent months has been generally downward. This unfavorable movement has been very pronounced since the fall of 1916, the culmination being reached in November and December, 1917, when the prices of many standard railroad issues were below those prevailing in the panic days of 1907.

This decline in railroad security values occurred in a period of unparalleled traffic. The railroads were overwhelmed with business. It was evident that one of the weak links in the chain of American preparedness was the insufficiency of equipment and terminal facilities on the part of most railroads, notably those in the East.

With the flotation of the second Liberty Loan, the marketing of new security issues by private corporations and the refunding of maturing issues became a grave problem. The government was sucking up all of the available investment funds, leaving nothing for the private corporation. For years, our railroads have followed the practice of issuing short time notes,—a hand-to-mouth method of borrowing which many prophesied would sooner or later lead to disaster. According to estimates which have been prepared by Mr. McAdoo, some \$265,000,000 of railroad securities mature and require refinancing in the calendar year 1918. Private bankers were unwilling to undertake large commitments for such purposes under

existing conditions. The failure to refund maturing issues meant an epidemic of railroad receiverships.

#### GOVERNMENT PLANS OF RAILROAD FINANCE

The railroad problem thus became one of the grave issues confronting the government, the satisfactory solution of which was necessary if the gigantic preparations of the nation were to go forward satisfactorily. Prompted by the three motives of ending the traffic paralysis, taking care of necessary refinancing, and of providing the funds urgently required to extend the facilities of the carriers in order to handle the enormous volume of business which they were called upon to move, the President, on December 26, 1917, issued a proclamation taking over the control and general management of the railroads. In his proclamation, the President outlined in general terms the financial arrangement which he believed to be equitable. Concerning this matter, he said:

While the present authority of the executive suffices for all purposes of administration, and while of course all private interests must for the present give way to the public necessity, it is, I am sure you will agree with me, right and necessary that the owners and creditors of the railways, the holders of their stocks and bonds, should receive from the government an unqualified guarantee that their properties will be maintained throughout the period of federal control in as good repair and as complete equipment as at present, and that the several roads will receive under federal management such compensation as is equitable and just alike to their owners and to the general public. I would suggest the average net railway operating income of the three years ending June 30, 1917. I earnestly recommend that these guarantees be given by appropriate legislation, and given as promptly as circumstances permit.

I need not point out the essential justice of such guarantees and their great influence and significance as elements in the present financial and industrial situation of the country. Indeed, one of the strong arguments for assuming control of the railroads at this time is the financial argument. It is necessary that the values of railway securities should be justly and fairly protected and that the large, financial operations every year necessary in connection with the maintenance, operation and development of the roads should, during the period of the war, be wisely related to the financial operations of the government. Our first duty is, of course, to conserve the common interest and the common safety and to make certain that nothing stands in the way of the successful prosecution of the great war for liberty and justice; but it is also an obligation of public conscience and of public honor that the private interests we disturb should be kept safe from unjust injury, and it is of the utmost consequence to the government itself that all great financial operations should be stabilized and coördinated with the financial operations of the government.

No borrowing should run athwart the borrowings of the federal treasury, and no fundamental industrial values should anywhere be unnecessarily impaired. In the hands of many thousands of small investors in the country, as well as in national banks, in insurance companies, in savings banks, in trust companies, in financial agencies of every kind, railway securities, the sum total of which runs up to some ten or eleven thousand millions, constitute a vital part of the structure of credit, and the unquestioned solidity of that structure must be maintained.

Almost simultaneously, the administration caused to be introduced in Congress a bill carrying out the general policy outlined. The bill provided that during the period of federal control, each railroad should receive—

as its just compensation an income at an annual rate equivalent as nearly as may be to its average net railway operating income for the three years ending June 30, 1917 (called herein standard return); said net railway operating income for the purposes of this act shall, as to carriers making returns to the Interstate Commerce Commission, be computed from such returns, excluding, however, debits and credits arising from the accounts called in the monthly returns leased road rents and miscellaneous rents: *Provided, however,* That no federal taxes in excess of taxes assessed during the year ending June 30, 1917, shall be charged against revenue in computing such standard return. Any net railway operating income in excess of such standard return shall be the property of the United States. The amount of such standard return as accruing during said period of three years shall be determined by the Interstate Commerce Commission, and the certificate of said commission as to the amount of said net railway operating income shall, for the purpose of such agreement and guaranty, be taken as final and conclusive.

During the period of such federal control adequate depreciation and maintenance of the properties of the carriers shall be included as a part of the operating expenses or provided through a reserve fund, in accordance with such principles and rules as shall be determined by the President.

In case of a dispute as to what constituted "the average net railway operating income" of a railroad, the matter should first be referred to a board of three auditors, appointed by the Interstate Commerce Commission, which, after a full hearing, should report to the President the amount due the carrier as just compensation. The bill further provided that in the event of the failure of the carrier and the government representatives to agree upon proper compensation, appeal could be taken by the carrier to the Court of Claims, and that pending the decision of that court, the government should pay to the carrier an amount not exceeding 90 per cent of such standard return, the balance due, if any, as determined by the Court, to bear 6 per cent interest during the period required for the adjudication of the matter.

Additions and improvements made to a railroad while under federal control out of the capital or surplus of the carrier are to receive a return "reckoned at a rate percentum to be fixed by the President" upon the cost of such additions and improvements. Additions and improvements made out of funds advanced by the government are to entitle the carrier to an additional allowance in its earnings "equal to the rate accruing to the United States" upon any advances, thereby enabling the carrier to make payment to the government without encroaching on its own share. The administration bill further provides that:

no carrier, while under federal control, without the prior approval of the President, may declare or pay any dividends in excess of its regular rate of dividend during the three years ended June 30, 1917, *provided, however*, that such carriers as have paid no regular dividends or no dividends during said period may, with the prior approval of the President, pay dividends at such rate as the President may determine.

The Act makes provision for the issue and sale of railroad securities during the period of government control. Section 7 provides:

That for the purpose of providing funds requisite for maturing obligations or for other legal proper expenditures, or for reorganizing railroads in receivership, carriers may, during the period of federal control, issue such bonds, notes, equipment trust certificates, stock and other forms of securities, secured or unsecured by mortgage, as the President may approve as consistent with the public interest. The President may purchase for the United States all or any part of such securities at prices not exceeding par, and may sell such securities whenever in his judgment it is desirable at prices not less than the cost thereof; any sums available from the revolving fund provided in section six may be used for such purchases.

At this time, when only the broad outlines of the President's plan have been sketched in and the administration bill has not emerged from committee, much less received final action in either house, it is impossible to indicate with any degree of exactness the resultant effects upon the carriers. Presuming, however, that the general plan recommended by the President is adopted by Congress and that the intentions of the administration are accurately reflected by Director General McAdoo's testimony before the Congressional committees, a general estimate can be made of the effect of government control during the war.

Director General McAdoo, in testifying before the House Committee on Interstate Commerce, explained the close connection

between financing the railroads and the successful financing of the needs of the government. He said:

Over and above the deficit and other measures now before Congress, the government faces the necessity of raising \$10,000,000,000 between now and June. With our financial situation as it is now—uncertainty largely prevailing—we can do nothing. Our savings banks, investment concerns, and other fiduciary institutions hold \$4,000,000,000 of railroad securities. So long as these institutions are uncertain as to the status of the securities they hold, what income they will get, and what the future holds for their interest and dividends, they are in no position to buy the bonds which we must offer.

At an earlier hearing, he explained that government control was inevitable for two reasons, because:

It was apparent that under private management close coördination of facilities could not be effected, because each of the roads naturally was seeking to get all the business it could. Only under government control could this coördination be achieved. It was also necessary to stabilize, or clarify, the financial situation. There are \$4,000,000,000 of railroad securities held by banks, trust companies, and fiduciary institutions throughout the country. These form a considerable portion of the country's basis of credit. Under existing conditions the shrinking in value of these securities created a serious situation.

Mr. McAdoo also said, "I don't believe a very great sum comparatively will be needed for financing the roads." In commenting upon railroad obligations maturing in 1918, he said "I expect the railroads to take care of those obligations themselves either through re-issue or some other method."

In detailing the needs of the railroads before the House Committee, Mr. McAdoo stated that the necessity for the \$500,000,000 fund proposed in the bill was due in part to need of maintaining and improving the roads and in aiding those in a weak credit position. Asked what sum total the government might finally expend in this manner, he submitted the following figures on the roads' own expenditures for the last five years: 1912, \$477,000,000; 1913, \$600,000,000; 1914, \$550,000,000; 1915, \$263,000,000; 1916, \$281,000,000.

Mr. McAdoo added that he thought the \$500,000,000 should be regarded as a one-year appropriation, and that if government control should last longer, similar sums might have to be asked of Congress periodically. He hoped to add to this sum by the profits which the government, by unified operation and other economies might effect.

With respect to maturities, he said:

I hope the railroads, aided by the government guarantee, will be able to take care of their own. If it should be required, government aid should be given wherever it is necessary to protect the credit position of roads taken over. I assume a first-rate railroad bond, guaranteed as it is by the government, should easily be refunded. The great needs of the government are such at any rate that all bond flotations necessarily will have to be conducted with the approval of the national Treasury.

The response of the market to the President's action showed unmistakably the dread and anxiety which had filled the minds of investors in railroad securities. There was a sharp rise in practically every stock. In the three stock market sessions following the President's announcement, there occurred an advance of more than one-half billion dollars in the market values of the stocks of seventy-eight railroads. Since that time there has been a gradual decline in railroad stock quotations so that by the close of January, 1918, a considerable part of the sharp advance had been offset in many cases.

#### EFFECTS OF THE GOVERNMENT PLAN OF RAILROAD FINANCE

In advance of the final enactment of a bill carrying out the President's plan for control of the railroads, it is impossible to do more than estimate the effect of government control during the war upon railroad securities upon the basis of the administration's proposal. There is some dispute as to exactly what return is contemplated. In the first place, the item "net railway operating income" as used in the proposed act, appears nowhere in the reports of the Interstate Commerce Commission. In other words, it is necessary to calculate the sum contemplated from the returns as published. Again, the Interstate Commerce Commission's official figures for the fiscal year ended June 30, 1917, are not as yet available. The estimates of the Bureau of Railway Economics and the Interstate Commerce Commission's experts vary considerably as to the return which will be shown when complete figures are at hand. The Interstate Commerce Commission's statement as to what the President's plan contemplates, including its estimate of net railway operating income, for the fiscal year ended June 30, 1917, is as follows:

Year ended June 30	Net Railway Operating Income	Investment in Road and Equipment—Book Value	Ratio of Earnings to Investment—
1915	\$683,104,833	\$16,499,124,491	4.14%
1916	984,872,959	16,872,373,900	5.84%
1917	1,020,800,000	17,250,000,000	5.91%

The Commission estimates the three year average to be 5.31 per cent.

The Bureau of Railway Economics disputes the conclusions of the Commission, alleging that it has more accurate figures than the Commission for the fiscal year ended June 30, 1917, and that by using these figures it finds that the average return would be only 5.22 per cent. An examination of the conclusions of the Commission and of the Bureau shows that the former was estimating on 95.87 per cent of all mileage while the Bureau's estimates covered approximately 86 per cent of the mileage.

Objections to the plan proposed by the President concern individual companies rather than general equities, with the exception of the general objection of the carriers that the year 1915 was the worst year that they had experienced in fifteen years, and that an average made up by the inclusion of this year with two average years was not fair to them, and does not adequately reflect the earning power of the railroads. The reply is made to this objection that the years ended June 30, 1916 and 1917 were unusually good and that in any event war times are abnormal times, and under such conditions the railroads cannot expect a guarantee of a rate of return equal to that which the properties might earn under peace conditions.

The second objection is, that the President's plan is most unjust to the speculative stocks and to stocks of recently reorganized companies. The Missouri Pacific, for example, has recently passed through a drastic reorganization in which a large amount of money was raised through a heavy assessment on the stockholders, whose subscriptions were based upon the reasonable assumption that they would receive a dividend almost immediately. Because of the fact that the receiver put a large part of the earnings of the property into rehabilitation work, the returns shown for the years 1915 and 1916 were very poor, although as a matter of fact the company's earning power had been quite satisfactory. This rehabilitation program is practically completed, and it is argued that the road has a demon-



strated earning power much beyond the amount which would be guaranteed under the President's plan. The stockholders, however, cannot share in these earnings because of the large amount which was invested in the road in two of the three years selected as the basis of calculating the guarantee. It is contended that for similar reasons the Pittsburg & West Virginia, the Western Maryland, the Pere Marquette and the St. Louis-San Francisco railroads will not receive anything like an adequate return under the President's plan.

On the whole, however, the guarantee tremendously strengthens the financial position of the railways. While injustice may be shown in a few cases, yet the amounts which the government guarantees most of the railroad systems are sufficient to enable them to pay their fixed charges. In most cases the balance remaining is considerably in excess of the dividend payments which have been made in the last three years.

It should be emphasized that the government does not guarantee the payment of dividends. The President's plan merely guarantees to the corporation a certain income, which will be disbursed in accordance with the contracts heretofore entered into by the corporation, and actions taken from time to time by the boards of directors. The directors of a railroad can at any time suspend dividends in case they feel that the money should be invested in the property, or if for any reason it seems advisable to conserve resources. The government does not guarantee dividends, but the practical certainty that with the government's aid new capital requirements can be financed makes it likely that dividends heretofore paid will be continued in most cases.

The President's plan will doubtless accomplish the two great aims which he had in mind. It will take care of the problem of refunding the \$265,000,000 of security issues falling due in 1918 and the maturities in subsequent years, in case the war continues. It also makes possible control over railroad financing so as to avoid any conflict with the government's plans. Above all, a method is provided by which the railroads can secure whatever additional money is necessary during the period of the war for the purchase of equipment and the extension of facilities.

## THE GOVERNMENT PLAN NOT A PERMANENT SOLUTION

The President's plan in no sense constitutes a permanent solution of the so-called railroad question from the security holders' point of view. It merely preserves the integrity of railroad investments during the period of the war. It does not carry assurance that present prices of railroad securities will be maintained. In fact, it would appear that any general appreciation in the prices of dividend-paying railroad stocks and bonds, above the figures prevailing in the latter part of January, 1918, is hardly to be anticipated, until the conclusion of peace begins to be discounted. It is true that the government's guarantee makes the dividend and interest on railroad securities especially secure, but with standard stock issues selling on a  $5\frac{1}{2}$  to  $6\frac{1}{2}$  per cent basis and with railroad bonds of the higher grade yielding from 5 to 6 per cent at present prices, the likelihood of further large advances is not very great. So long as the war continues, competition by the government for investment funds will become increasingly insistent. The consequent strain on credit will tend to increase rather than ease up, with the result that investors will demand even a higher yield than now prevails on taxable securities. If the war should last for a number of years taxes will almost certainly increase, with the result that high class taxable investments will suffer by comparison with tax-free government bonds. It must also be remembered that in so far as the security holder is concerned, the earning power of the railroads during the period of the war has to a large extent become fixed. Increased earnings will not mean increased dividends, for it is probable that Congress and the Administration will take the view that the companies' share of excess earnings should go into extensions. The great uncertain element is, of course, the duration of the war, and the extent to which the present situation as regards earning power and methods of operation will be changed before the end is reached. It is furthermore uncertain at the time this article is written, exactly when the government will return the operation of the railroads to their owners. It appears probable, however, that they will be returned within a few months after the conclusion of peace.

The real problem of the railroad security holder concerns his status after his property is returned to him. The old problems of high operating costs and fixed rates; the unwillingness of regulatory

commissions to advance rates; the failure on their part to realize that capital has been gradually forsaking the railroad field, because an attractive return was not offered, must all be faced again. The situation will be aggravated by the practical certainty of high post-war income taxes, which will cause the investor to demand an addition to his rate of return, offsetting at least in part the taxes which he must bear. The most serious element in the situation from the investor's standpoint, is the problem of readjusting railroad wages to a peace basis. It is evident that the administration intends to have no quarrel with the railroad brotherhoods, which means substantial increases in wages. The possibility of reducing wages when living costs decrease after the conclusion of the war, are not at all clear. If it proves impossible to reduce labor costs, the outlook for the railroad security holder upon the return of peace is not very encouraging, particularly when the time is reached—as it must be reached—for a general economic readjustment with a consequent reduction in traffic and in operating revenues. The political significance of a general increase in rates while the roads are under government control would be so profound as to cause every expedient to be used to avoid taking this step. Whatever economies can be effected through centralized control and unified operation will offset in part the higher wages which the Director General will without doubt authorize. Mr. McAdoo, moreover, has indicated that he expects to use the \$500,000,000 appropriation contemplated by the administration bill to constitute the so-called "revolving fund" to meet, among other things, any operating deficiency which may arise.

It is very possible, therefore, that the roads may be returned to their owners operating on a deficit under unified control and with the probability of still larger deficits under individual control. The significance of the wage problem at once assumes its true proportion when this contingency is kept in mind. The future of railway investments, therefore, depends upon the breadth of vision and courage shown by the Interstate Commerce Commission and the state commissions in adjusting rates from time to time so as to assure a fair return and adequate protection to the security holder.

## STATUS OF EXISTING RAILROAD LAWS AND REGULATIVE AGENCIES UNDER FEDERAL CONTROL

BY EDGAR WATKINS

The regulation of railroads may for the purposes of this discussion be divided into two categories. These are, the regulations tending to promote competition among railroads and those prescribing a price to be paid for a service.

The orders of the Director General which in effect suspend the anti-pooling section of the Act to Regulate Commerce and the right of the railroads to protection against short-hauling, which take from shippers their statutory right to route their freight and which limit the right of the carriers to make traffic agreements, fall in the first category and suspend statutes inconsistent with the full utilization by the government of the property taken over. These statutes may be considered as repealed for the time being by clear intendment of Congress. Accounting rules, the discharge of employes and the issuance of passes, within the terms of the law, are but incidents of possession and use, and freight embargoes are frequently enforced by railroads privately owned. Demurrage charges and regulations are not primarily intended to obtain revenue but to facilitate transportation by the prompt release of cars. If the demurrage charge is small a shipper may be slow to release his car, while a high rate of demurrage stimulates the expeditious loading and unloading of cars. It follows, therefore, that the Director General was effecting a greater utilization of "material and equipment" for "purposes connected with the emergency," when he obtained an increase of the demurrage rates.

What has been done was clearly authorized by the act of Congress under which the Director General was appointed, and he probably could have made effective the demurrage rules without the interposition of the Interstate Commerce Commission.

Similarly there could be no reasonable question of his authority to make rules and regulations as to methods of packing, loading and stowing shipments, and of otherwise protecting and conserving those commodities required by the exigencies of the present

situation. Thus he may say, as the Food Administrator has stated in advertisements, that flimsy boxes should not be used as containers for the transportation of food products. Passenger travel might be curtailed, because to do so would leave available more equipment for the transportation of commodities necessary to supply the public wants.

The provisions of sections 2 and 3 of the Act to Regulate Commerce, which prohibit discriminations and preferences, remain in force, except preferences may be given as stated in the act relied on by the President and quoted above. Similar but less liberal governmental preferences were given by the Hepburn amendment of June 29, 1906.

The shipper's right to a reasonable rate, to allowances for services and instrumentalities furnished, to reparation for damages suffered and to protection against an "increased rate, fare, charge or classification" until "after approval thereof has been secured from the commission,"<sup>1</sup> are not inconsistent with the purposes for which the President was authorized to take possession of the railroads.

These rights of shippers to a fair equality among themselves, to reasonable charges, to allowances in proper cases and to freedom from rate increases without prior approval by the Interstate Commerce Commission are in the second category; and being entirely consistent with the purposes for which the President was authorized to seize the railroads still exist, and it seems clear that Congress has not as yet given the President power to issue all kinds of orders which "shall have paramount authority."

The shipper's rights are subordinate to the needs of the government in connection with the transportation of all persons and commodities used or necessary to the conduct of the war, and to the authority of the President to utilize the railroads for "such other purposes connected with the emergency (created by the war) as may be needful or desirable." "Needful" and "desirable" give the President a discretionary power of wide scope, but such power is the power of utilization of the railroads. If the utilization for the purposes named or for purposes connected with the present

<sup>1</sup> Act of August 9, 1917, amending sec. 15 of the Act to Regulate Commerce. It will be noted that this act was passed nearly a year after the approval of the act under which the director of railroads obtains his power: and that the President seized the roads under authority of a section of an appropriation act passed nearly eight months before Congress declared the existence of a state of war.

emergency and deemed needful or desirable exclude any shipper from the use of the railroads, the statutory power has not been exceeded. If, however, the shipper be not so excluded from such use, the use he receives, limited only by the governmental exigencies, must be on the terms prescribed in the acts to regulate commerce and not on different terms ordered by the Director General.

While the President gives "paramount authority" to the orders of the Director, he means of necessity orders authorized by the act of August 29, 1916, and not orders which would fix charges different from those found reasonable by the Interstate Commerce Commission.

Congress has under consideration bills fixing more definitely the powers to be exercised by the President. The authority to prescribe rates and to make regulations not directly affecting the utilization of equipment, may, in the discretion of Congress, be left with the several commissions; but it may well be argued that a tribunal like the Interstate Commerce Commission composed of nine men cannot act with that promptness demanded by the exigencies arising out of our participation in a great war.

The Interstate Commerce Commission exercises legislative, judicial and administrative functions. It also debates like a legislative body, and delays like judicial tribunals. Its administrative functions can best be left to one man; but its rate making, or legislative function, and its rate judging, or judicial function, will be, if retained, given greater consideration, although not necessarily with more correct conclusions, than if committed to any executive.

Rate making as between the private owner and the shipper is unquestionably a legislative act. There is force in the argument that since the government is the possessor and user of the railroads the charges to be exacted may be prescribed as mere administrative acts. This question is academic as the Congress is proposing legislation which it may lawfully enact, whether or not there exists a difference in power because of the ownership being private or public.

It is proposed in the pending legislation to specify where the authority to make rates shall lie. The argument is made that unless the power is given the Director General to take any action concerning either operation or charge that he may deem needful and proper, he will be unable effectually to meet the public exigency. By others the argument is pressed on the committees of Congress

that to give so great a power to one man is dangerous and that if Congress should give such jurisdiction to the Director General it would be shirking its constitutional obligations by delegating legislative powers.

Congress cannot delegate its legislative authority. It can, however, prescribe a general rule leaving to a delegated person or tribunal to determine when particular facts bring a rate, practice or regulation within the rule. This Congress did when it created the Interstate Commerce Commission, which, when first created, was but part of the Department of the Interior. That the Commission was composed first of five, later of seven and now of nine men, does not change the rule.

The number of men entrusted with power has no relevancy to the legal right to make the appointment of the agency, and one director general can be given all the powers that have been or may be given nine commissioners.

When different agencies have jurisdiction, however carefully delimited, over the same subject matter, there will of necessity arise unforeseen situations presenting questions, difficult of solution, as to which agency has authority. No general line of demarkation of separate authority can make provision for the infinite situations which may from time to time arise. In the present hour of supreme need for prompt and decisive action, there should be one agency with "paramount authority." The ordinary commissions may, in subordination to this agency, be utilized; and, when speed is not necessary, these commissions may be left to hear, discuss and recommend.



## HAS THE IMPORTANCE OF FEDERAL VALUATION OF RAILROADS BEEN INCREASED OR LESSENED BY FEDERAL CONTROL OF OPERATION?

BY H. B. WHALING

A report of the general secretary of the President's Conference Committee for the Federal Valuation of Railroads, dated December 31, 1917, stated that up to June 30, 1917, the government had spent about \$9,000,000 and the railways approximately \$16,600,000 on valuation work since the passage of the Physical Valuation Act of March 1, 1913.

Tentative valuations have been served on six carriers with a total mileage of 2,120 miles. Field and track inspection has been completed on 153 roads aggregating 61,333 miles; on 9 more roads totaling 44,017 miles this work is from 75 per cent to 100 per cent completed; it is from 50 per cent to 75 per cent finished on 9 additional lines having a mileage of 36,970 miles; and it is started but less than half done on 186 roads comprising 186,834 miles.

The field and track work is not the most difficult part of the undertaking. After the inventory is made the problem of valuation remains—what unit prices, what deductions for depreciation, etc., almost *ad infinitum*. All in all, the work is probably about one-third completed.

The question presented for discussion in this paper is—Does federal control of operation decrease or increase the importance of this great undertaking? This may best be answered by considering the possible uses of a physical valuation of railways.

A physical valuation may be used (1) to promote intelligent rate regulation, (2) to secure adequate supervision of securities issues, (3) to reach a just value in condemnation cases, and (4) to value non-paying roads for purposes of taxation.

### PHYSICAL VALUATION AND RATES

Intelligent control of railway rates presupposes a definite economic policy. Under private ownership and operation it is the purpose of owners to get as much as possible out of the public.

Rates are grossly discriminatory and generally extortionate. Under government regulation or government control it is intended to fix rates so as to shape the railway system to serve and promote the economic needs of the country. But what rate policy will accomplish this end?

The attempt to outline an economic policy of rate fixation leads us immediately to the law of comparative costs—nations, communities, persons should specialize in the production of those goods which they can produce relatively the cheapest. It is manifestly absurd for Iowa, for instance, to try to raise grapefruit or bananas when it can engage more productively in wheat and corn growing. It is no less absurd, save in degree only, for any community to divert its capital and labor from the most productive pursuits to those less productive. If the principle of comparative costs is operative there is secured a maximum utilization of resources—human and natural. Conversely, anything that interferes with the working out of this law induces an economic loss.

It is clear that the railways are the arteries of trade and that upon the proper functioning of them depends the economic movement of goods from one community to another. If rates, in the aggregate, are too high, internal commerce is restricted, or what is the same thing, the law of comparative costs is prevented from freely working, with the result that communities are forced to produce goods which they could otherwise get less expensively in exchange and productive agents are employed at less than the maximum advantage. By a like sign, if rates in total are too low, not enough capital will flow into the railway business and internal commerce is diminished with a resultant economic loss. Also, if rates are made too high to one community and too low to another the benefits of trade are destroyed, for if a community cannot ship goods out it cannot ship them in. Thus extortionate rates, confiscatory rates and discriminatory rates are economically bad.

The latter evil may be remedied by applying the principle of joint cost to railway tariffs: the two former give rise to the problem of valuation. It is this problem that involves the question of a physical valuation. To it attention is directed.

It will hardly be questioned, I believe, that if competition prevails the law of comparative costs will operate with the result that the maximum utilization of human and natural resources is achieved.

On the other hand, monopoly, by restricting the supply and by preventing the working out of the principle of comparative costs, signifies an economic loss. If the monopoly is a natural one it cannot be prevented by regulation, but it may be so controlled, through fixing its prices, as to secure the result, if not the fact, of competition, and it is the result of normal competition that is desirable.

Under competitive conditions it is ordinarily true that the value of a business equals the amount of capital invested in it. But otherwise, a competitive business can earn no more than a normal return on the capital actually invested in the enterprise. If we reverse the process in the case of monopoly and fix a price which allows to the monopoly no more than a normal return on investment we achieve the results of competition and secure the most productive use of economic agents.

Railways, of course, are characteristically monopolistic. Consequently, it should be a tenet of regulative policy to fix rates so as to permit the accrual of a normal net return to investment equal to what could be had in competitive businesses of a similar degree of risk. This is a full application of the doctrine of comparative costs.

The determination of investment without a physical valuation is inconceivable. Thus it becomes clear how important it is to have such a valuation. It is, of course, not contended that there are not intangible elements in valuation, but it is maintained that intelligent valuation and rate regulation are not possible without a physical valuation.

Since the aim of rate fixing is to fashion the railway system to serve economic welfare best, it can make no difference whether the government controls or only regulates the roads. Legal title would not change the nature of the economic problems involved. It is, therefore, patent that the recent action of the government in assuming control of operation, permanently or only temporarily, can have no effect on the importance of a physical valuation. From the point of view of rates, it is neither more important nor less important that the task begun should be completed.

#### PHYSICAL VALUATION AND SECURITIES

Railway securities have afforded a most delectable field for financial manipulation. The Alton, the New Haven, the Rock Island and many others are classic instances. In 1898 Alton stock was

selling well above par—the surplus of the road was approximately \$7,000,000 and net earnings easily large enough to maintain 8 per cent dividends. Under the “able” leadership of Mr. Harriman, in seven years, the capitalization was expanded from \$34,000,000 to \$114,000,000 while property to the extent of only \$18,000,000 was acquired. In essence, the sound credit and excellent reputation of the Alton, built up through years of conservative management, was overcapitalized and sold to an unsuspecting public. The New Haven paid reckless prices for steam and trolley lines in the effort to create a transportation monopoly in New England with the result that it was greatly overcapitalized and its stock fell from \$200 to somewhere near \$50. The Rock Island regularly paid dividends out of capital, failing to set aside enough to cover depreciation because paying fancy prices to insiders for subsidiary lines. The result—the once prosperous road was swamped, nay drowned, in water of the characteristic muddy financial sort. And so on we might extend the sickening list—but enough.

In all this manipulation the public and the investor are interested. If rates are allowed high enough to pay dividends on the watered stock they are extortionate and trade is restrained. If rates are made so as to allow a return on investment without regard to the outstanding securities, dividends cannot be paid thereon, the credit of the company suffers, funds for extensions cannot be had, adequate transportation facilities cannot be furnished, and trade is diminished. In both cases the public loses. Likewise, of course, the investor is mulcted out of his investment.

Only the financial buccaneer gains. He should be made to disgorge in so far as possible—but it is high time that such manipulation be stopped and this can be done only by government supervision or control of security issues. The government may, in the case of private operation, either authorize issues or enforce publicity. The latter is probably preferable.

Whichever method is adopted makes no difference in so far as physical valuation is concerned. Proper control of securities issues requires sound accounting and sound accounting is based on physical valuation. It would not have been possible to pull off the Alton and other deals if the actual value of the property had been known and if the public had been informed of the disposition of the

proceeds of the securities sales. Physical valuation, sound accounting, publicity,—here lies the remedy for financial troubles.

It can make no difference whether the government merely supervises security issues, or takes over the roads permanently and issues its own securities, the financial problem is the same. Again, then, the necessity for having a physical valuation is not changed.

#### PHYSICAL VALUATION AND CONDEMNATION

It is, I believe, usually considered that physical valuation is essential to condemnation proceedings. This is true, but not in the sense generally meant. If the government fixes rates or permits rates which give a certain earning power and consequently establish a certain market value of the railway securities, it ought in a purchase case to pay a price for the railways indicated by market value of securities (averaged over a period of years, of course) and not by physical value. It may be true that there is an element of monopoly returns in the earnings, but securities have been issued thereon, and equities have been established which it is not just to disturb. It is possible to reach the desired end by a progressive income tax and by a still more progressive inheritance tax, the proceeds of which may be used to amortize the securities representing the monopoly element in return. However, it is far from clear how pillaging the investor for the sake of the public is justifiable. But in the event that the road has been "skinned," i.e., depreciation not taken care of, a physical valuation would be serviceable in condemnation cases. This question always arises—hence condemnation cases require the use of such a value.

In my estimation, the recent policy of the government in guaranteeing the net earnings averaged for a period of years is sound economically.

#### PHYSICAL VALUATION AND TAXATION

For purposes of taxation, value depends primarily upon net earnings, but for non-paying roads a "dismembered selling value" is useful. This contention rests on the theory that goods should be put to the most economic use and if one railway cannot use them gainfully they should still be taxed at the price another railway, or another business of any sort, will pay for them.

By way of summary it may be reiterated that a physical valua-

tion is essential (1) to economic regulation of rates, (2) for the protection of investors, (3) in establishing a purchase price in certain cases, and (4) for the determination of a taxable value in the case of non-paying roads. With regard to the first two points especially, economic policy rests on a physical valuation. If the government only regulates railways or if the government continues to operate them as a public business its policy cannot economically be different, nor can it be successful without the means of determining investment, namely, a physical valuation. It is, therefore, necessary that the work now being done under the direction of the Interstate Commerce Commission go on to completion.

## CONTROL OF RAILROADS AFTER THE WAR

HENRY A. PALMER

It might be asked why it should be assumed that there will be or should be a change after the war in the plan of railroad control in effect before the war. In other words, in what manner has the war—which has caused a temporary change to government operation to meet a serious emergency, but for that emergency only—made it incumbent on the country to revise its method of regulating the common carriers? Most certainly it does not follow that, merely because there has been a change in methods to meet war conditions, there should be a permanent change. But just as certainly it is true that the exigencies of war have emphasized some of the weaknesses in our methods of regulation and that it would be folly not to cure them now that they have been so plainly exposed. And just as certainly it is true that the necessary war operation of the railroads by the government has demonstrated methods by which efficiency may be increased through their permanent application, and not to take advantage of this knowledge would be equally foolish. So, not as a natural consequence, but merely because we have already learned many ways in which our handling of the transportation problem may be improved, and will doubtless learn many more before the war is over, it does follow that after the war, when the railroads are returned as they should be to their owners, there must be some revision in the machinery by which they are regulated: this, both for their own benefit and that of the shipping public.

No one ought to attempt to say now with any degree of exactness what the after-the-war method should be. We are going through a historic period in railroad regulation and the experiment of government operation is as yet too new to justify any definite attempt at permanent application of the lessons learned—at least as long as there is so little prospect of an early end to the course of study. Whether we agree with what the government has done or not, it is done, and government operation will continue to the end of the war. We have all that time for observation and consideration as to what should be done when peace comes. Within a cer-



tain definite period after the end of the war, government operation should cease and railroad control should automatically revert to the owners of the property. Then we should be prepared to enact, within that period, well considered, thoroughly scientific railroad regulation legislation, based not only on what was known before the war, but also on what we have learned while the war was in progress.

#### OPINIONS REGARDING PUBLIC POLICY AFTER WAR

If government operation of the railroads during the war for the purpose for which they were taken over is a success—as it ought to be and doubtless will be—there will be a great cry for government ownership. Already the preliminary notes have been heard. Of course, it does not at all follow that, because the government with the autocratic power given to the Director General of Railways in a war emergency can accomplish what the carriers themselves, hampered by law and custom and regard for the rights and comforts of their patrons, as well as for their own profits, could not accomplish, government ownership would be the proper nostrum. The arguments for and against such ownership are too well known to be entered into here. It is sufficient to say that the success of the government in accomplishing a war time task under war time powers at a cost of great sacrifice by commercial interests, would not be a legitimate added argument in its favor; while as an added argument against it is to be counted the fact that the government will hardly be in shape at the end of the war to assume such a huge financial burden.

As to whether there shall be some permanent plan of government control or operation short of actual ownership but akin to the present war plan, the question divides those who would put into effect a non-competitive system under government auspices from those who see no reason, because we have had a war, that the business methods of private ownership should not, in general, continue to govern. No one can dispute, of course, that if the government owned or controlled all the railroads and would work out and enforce an efficient plan, millions of dollars in duplicate salaries, duplicate trains, duplicate rents, duplicate service and facilities of all kinds could be saved. But they could also be saved if the government operated all the grocery stores, or all the coal mines, or all the churches. We may some time reach that Utopia but the time is

not yet, either through government ownership or any other form of paternalism.

#### NEEDED REFORMS IN RAILROAD REGULATION

Let us lay down, then, as the first general principle of the new system of regulation, that the railroads are to remain in private ownership, but with the added degree of government control that is necessary to the fair accomplishment of some of the reforms that seem to be wise. As the second, let us say that all laws that have hampered them in efficiency are to be repealed or amended so that, though injustice may not be done, the carriers will still be able to do things dictated by good business judgment which they are now prevented from doing. As the third, let us say that as far as possible or wise, all things considered, the railroads shall be compelled by law to do the things that have been demonstrated as efficient for them to do but which, of their own will, they have refrained from doing. In other words, let the railroads continue to operate under the same general plan of private control and ownership as before the war, with more liberality toward them as to the things they are permitted to do and greater strictness as to things they are compelled to do—which carries with it the idea of greater powers in some regulatory body, though those powers would be used for the carriers' benefit as well as for the repression of any improper desires on their part.

To start with, let us do away with the multiplicity of regulating bodies, the celebrated forty-nine masters, and center the regulating power in one federal body, the Interstate Commerce Commission. Let us do away with the state commissions as railway regulators except as they may continue to exercise mere police powers and, possibly, as they may continue to regulate railways that are purely intrastate. There are those who say this is not legally possible but there are others who say it is. But so far as it is legally possible it should be done and every effort should be made to determine its legal possibility. It is ridiculous and highly productive of inefficiency and unfairness that, for instance, a train must have one kind of crew in one state and a different kind in another; or that the fare should be fixed at one rate in one state and at a different rate in another, both, perhaps, varying from the interstate rate. The railroads, whatever their paper form of organization or what-

ever the rights of states to regulate them, are a national system in reality and in so far as they are not permitted or compelled to operate as such they must fall short in efficiency.

It is true that this doctrine is shocking to some as an attempt to invade the sanctity of so-called state rights. But there is nothing sacred about the theory of state rights or any other political theory. If it does not hold water it should be cast aside. And, besides, there are those of no small ability and legal lore who hold that the doctrine of state rights is not incompatible with centralized federal regulation of railroads—indeed, that the two go hand in hand in that the real and highest right of a state is to be protected from discrimination by reason of the act of another state. These are questions for the lawyers, but they should be threshed out with a view to constructing an efficient system.

There must be a more definite government policy with respect to the revenue railroads are allowed to earn. As things are now, the Interstate Commerce Commission regulates rates—and the rate regulating power should remain in that body, war or no war—but there is always dispute and never certainty as to just how far the Commission may use its judgment in deciding whether the revenues of the carriers are sufficient. The inclination, in the absence of a definite declaration by Congress on the subject, is to confine consideration to the questions of reasonableness and discrimination. There should, perhaps, be fixed a minimum net return.

Even with such a provision we should be confronted by the vexed question of whether a certain general increase, which the weak roads need, should be allowed when it would swell the revenue of the more prosperous roads to unreasonable proportions. This brings us to the subject of the pooling of traffic and revenues, now illegal. It should be made legal, within certain limits. The stockholders of a given road should have reasonable assurance that, so long as the road was properly operated and necessary at all in the scheme of things, it would earn for them no less than a certain percentage of return. It might earn as much more as good management and general conditions warranted. Such a plan, to be sure, unless carefully worked out, might provide for the prosperous continuance of a road that really had no reason for living or for making money out of its existence. There would have to be government participation in deciding whether a given road should share in the

promise of minimum return, and that power of participation would have to be wisely exercised. The strict rule of the survival of the fittest cannot be applied to the railroad situation for the reason that we have to take things as they are and not as they might be if we could start from nothing to build a new transportation scheme. Communities and businesses have grown up on the basis of the present system. They cannot be wiped out in the effort for absolute efficiency. The best that may be done is to empower an able commission to handle the situation with due regard for all existing interests to the end that necessary roads may not perish for lack of revenue but that those more fortunately situated may contribute somewhat of their prosperity. Doubtless repeal of the anti-pooling laws would accomplish all that is desired if the repealing act were accompanied by wise legislation safeguarding all interests. The first essential is to determine the policy. If it be the policy to enable our present railroads to continue to exist, and that by means of some plan which shall operate to distribute profits somewhat more equitably, and at the same time bring greater facility in the handling of the country's business by the pooling of traffic, then the rest is comparatively easy, a matter of detail. Such a plan would not be solely nor even chiefly for the benefit of the carriers. The shipping public would profit. Rates would probably be no higher than they otherwise would be and service would be better.

#### POOLING OF FACILITIES

The pooling, or common use, of railroad facilities is already legal and was tried even before the government took over the roads with some degree of success by the eastern carriers. It should be made compulsory, within proper limits. The purpose of transportation is to get freight and passengers moved and the reason for congestion is that they are not moved. If we are to consider transportation nationally there is no reason why a road possessing facilities that will help in the moving of this traffic should not be compelled to permit their use to the utmost by anybody that can use them for the necessary purpose, provided, of course, that the rights of the owner to due compensation are protected. It might be urged that if a given railroad knew that some facility it might build—a new terminal, for instance—could be used by any road that wished to use it, it might refrain from building it. But here the govern-

ment should take a hand. When facilities are needed it should compel the railroads to provide them, and there would be no hardship or injustice in its doing so as long as it provided for the necessary revenue.

The one great transportation lesson of this war is that the railroads have not kept pace in the matter of rolling stock and terminal facilities with the growing needs of the country, even aside from the war emergency. They must be made to do so, for in the sense that transportation is a commodity to which the public is entitled at reasonable rates, the railroads cannot be operated as a private business. But they cannot be expected or even compelled to do so unless their income is sufficient to justify the necessary expenditures. Rates and service to the public are coördinate questions and must be handled by the same authority in accordance with a well defined policy.

As a means of bringing about more expeditious loading and unloading of cars by shippers and consignees, higher demurrage charges are being tried by order of the Director General of Railways and the Interstate Commerce Commission. In so far as they achieve the object desired they are perfectly proper. The question of propriety is merely one of efficacy. There is as yet no scientific system of such charges for that purpose. There should be one, and now is the time to make the preliminary study.

#### SPEED IN MOVING FREIGHT

But while penalizing the shipper and the consignee for failure to reach efficiency in their part of the transportation operation, why not compel the carriers, by some similar system of penalties, to move freight more promptly? No inconsiderable part of the delay resulting in demurrage is attributable to the faults of the carriers themselves. Figures are easily obtainable showing the unreasonable time consumed in transit and the same is true with regard to delays at terminals. Daniel Willard, president of the Baltimore and Ohio railroad, has pointed out that 52 per cent of the time of a freight car is wasted around terminals and that it is moving on the road only 11 per cent of its time. When from this 11 per cent is deducted the time wasted in slow movement, the freight car as a medium of transportation does not make much of a showing.

Mr. Willard's statement was made last July. Doubtless the

showing was in great measure due to the tangle brought on by the war congestion, but not all of it was thus due. There is, perhaps, no greater field for improvement in transportation than in the movement of freight cars, and shippers complain greatly at being held up by the reformers as horrible examples when they know that the railroads themselves are at least as greatly to blame. The government, by its authorized system of penalties, compels or tries to compel the shipper to be efficient. It should exercise the same degree of compulsion toward the carrier.

There should be a clearer determination as to the rights and duties of carriers in the matter of embargo, as to when an embargo may be declared and what notice shall be given, both to other roads affected and to shippers. The practice is loose and productive of much confusion and dissatisfaction.

A. H. Smith, eastern assistant to the Director General, recently instructed eastern roads to embargo consignees who do not unload cars promptly, regardless of demurrage rules. This is an order perhaps necessary and proper under war operation, if it is carried out under the direction of government authorities, but there is nothing in law to prevent such an embargo at the will of the railroads in ordinary times when, in their opinion, necessity requires it. Probably there are few railroad men whose judgment could be depended on in a matter of that kind, and even if the motive were admittedly proper the shipper is entitled to know that he has recourse and that his interests are protected.

Another result of war operation of the railroads has been the overriding of the law giving to the shipper the right to direct the routing of his freight. It is certainly in the interest of efficiency that this be done, though perhaps the Director General exceeded his legal power in doing it. Perhaps the right ought permanently to be taken away by law within certain limits. The shipper ought, no doubt, to be permitted to control delivery. That is, though freight should be sent by way of the route most likely to afford expeditious movement and not by the route some persuasive agent has induced the shipper to select, the shipper ought to be protected to the extent that the freight will be switched without cost to him to the road on which he has his place of business or sidetrack, from the road which has been selected as the most expeditious route.

There should be provision for compulsory arbitration of wage

demands which would carry with it a practically automatic increase in rates to meet the wage increase when such an increase is permitted or ordered by the government. Another performance like the clubbing through Congress by the labor unions of the Adamson eight-hour wage law, leaving the railroads to find, as best they may, the money to meet the increase, should be made impossible.

Still another reform that has been many times urged and generally overlooked, apparently because it is held of comparatively slight importance, is the giving to the shipper right to appeal from negative orders of the Interstate Commerce Commission. Important or not, it is his right, or should be, and should be given him for the asking. The less important it is the less trouble it would be to grant it.

There has been no attempt herein to outline any dogmatic plan for a reorganization of the plan of railroad control. Not only is the future of the railroads uncertain but it is not altogether certain what that future should be. The attempt has been merely to suggest some changes that would appear at this time to be wise.



## RECONSTITUTING RAILROAD REGULATION

BY GEORGE A. POST

"What," I am asked, "is involved in reconstituting the agencies of railroad regulation?" As I enter upon the adventure of redeeming a promise made long ago to discuss that question for *The Annals* the agencies of railroad regulation have been deposited for the most part in cold storage and the railroads themselves have been reconstituted, with a vista of future reconstitution which no wise man will attempt to prefigure.

The only reason why the Editor of *The Annals* would invite an expression from me is that I happen to bear the honor of being President of the Railway Business Association, a national organization of manufacturers, merchants and engineers who deal with railways. Hence the only reason why I should express views upon the transportation question is because the Railway Business Association had formulated a program. We had formulated proposals before the United States entered the war, but here we are with a new heaven and a new earth and I cannot yet speak for my associates with authority on the altered aspects as they now confront us.

As purveyors of equipment and supplies we have in the past dealt with the employes of railroad corporations whose owners were legion. Today we deal with the same individuals, but they are now government officers. What further evolution in our commercial transactions the war may bring as it wears on we shall greet with equanimity and with a determination to perform our utmost for the success of the temporary government operation necessitated by the war.

Concerning the status which shall follow the conclusion of peace I can only utter my individual hopes. Miles of good white paper have been consumed in foretelling what will be different after the war. Certain things, I pray heaven, will be the same after the war—the same that they have been since that bleak day 297 years ago when the Pilgrims entered the wilderness at Plymouth Rock.

Now what is meant by the competition which it is desirable to preserve as a feature of the new railroad structure that is to supersede government operation after the conclusion of peace? Mighty

few hard-headed citizens will feel inclined to give up the advantages which unification has given both under the Railroads' War Board from April to December and under the government Director General since—advantages arising from mobilization of rolling stock without regard to ownership, common use of facilities and the routing for directness and cheapness as distinguished from earnings for individual railroad corporations. Foolish competition seems more susceptible to modification than before the war. The government is performing functions which previously business men performed. The conditions under which business men did their work were those of compulsory competition indiscriminately comprehensive. The government has promptly removed from its own path some of these obstacles. Whatever we have gained in transportation by substituting coöperation for competition we shall keep, in so far as such retention is consistent with retention of competitive elements essential to progress.

Competition is not confined to rivalry between corporations. Competition exists among the officers and employes of each corporation for promotion. That is the first condition which I hope will be preserved the same in transportation after the war.

As I write, news comes that the Director General of Railroads has divided the country into three regions and appointed as regional managers three men—A. H. Smith, R. H. Aishton and C. H. Markham. Who are these men? Mr. Smith entered the service of the Lake Shore & Michigan Southern Railway as a messenger boy in 1879 and in 1914 had reached the presidency of the New York Central Lines. Mr. Aishton in 1878 was an axman in the engineer corps of the Chicago & Northwestern Railway and in 1916 became president of the same company, having like Mr. Smith made his way through the grades. Mr. Markham in 1881 was a section laborer on the Atchison, Topeka & Santa Fé and after a rapid rise within the Santa Fé organization was induced by the Southern Pacific to become general freight and passenger agent of its Oregon lines in 1897, being appointed general manager of the Southern Pacific in 1904. After a period passed in the management of petroleum companies he was elected in 1911 president of the Illinois Central Railroad. Each of the three is the product of rivalry for advancement within an operating railroad unit. We do not know where the Director General of Railroads would have found men to

be regional managers under the war régime if the railroad organizations which I have mentioned had not existed. What we do know is that those organizations did exist as institutions within which advancement was open to the humblest beginner, whom no influence but his own incapacity or delinquency could repress and who needed no influence but his own ability and energy for the ascent to the topmost rung. The men were there when the country called and it was in those organizations that they were trained.

Important, however, as competition is within the organization it is equally important between railroad organizations. Every management knows that its performance will be measured by the foremost achievement of its contemporaries. Every aspirant is stimulated by the knowledge that leadership in achievement by him will bring opportunity for advancement by transfer to other companies.

As a manufacturer of railway appliances I contemplate with satisfaction and zest the preservation of a substantial number of independent railroad units. The progress of the art toward increase of safety, speed, convenience and cheapness by the development of new inventions is a fascinating story of indifference or opposition by one railroad and appeal by the developer to another and another until a test is somewhere accorded, a demonstration afforded and the qualities of the discovery made known in practice. Let us preserve the appeal; in that way lies progress.

If citizens in their individual capacity are to subscribe the capital and be responsible for the management of the railways under regulation, one new and untried element must be introduced into regulation. The government must hold some one of its branches responsible for keeping watch over railway revenues and when they are inadequate for proper service, including the attraction of new capital for additions, betterments and extensions, this branch must take steps to correct the deficiency.

Every student of current discussion and events knows that numerous aspects other than those to which I have referred are under debate and to many it will seem that some of those which I have not specified are too important to be omitted even from so highly condensed a statement as this. Nevertheless I am content to specify at this time these two elementals—individual initiative and adequacy of revenue—as the essential factors in a national railway system.

## A SUGGESTED PLAN FOR PERMANENT GOVERNMENTAL SUPERVISION OF RAILROAD OPERATION AFTER THE WAR

BY ALEXANDER W. SMITH

The operation of the railroads as a war measure presents one of the most drastic economic revolutions in our history. Regardless of the duration of the war, the complications springing out of governmental operation will probably preclude a return to the old system. Many divergent but coöperating interests will oppose such a return. The grafters, if such there be, will desire to continue their graft. The politicians will covet the patronage and power which will flow from government operation in ever increasing volume. No doubt a majority of the security holders will prefer to sell out to the government. Certainly so, if too great a sacrifice is not enforced. The combined force of these selfish interests, which may be expected to organize for mutual profit and protection, will override the public interest unless a counter campaign is launched early in the contest. As is usual under popular rule, education is our only weapon in defense of the general welfare.

Thinking people are alive to the fact that the interests of the shipper and passenger far outweigh all other interests in the problem. Some permanent plan should be promptly thought out and crystallized in the hope of at once satisfying the advocates and opponents of outright government ownership.

### THE PLAN FOR REGIONAL FEDERAL HOLDING COMPANIES

Hon. William W. Cook of the New York Bar, a prominent and successful corporation lawyer, has filed with the Joint Committee on Interstate Commerce at Washington, "A Proposed Solution of the Railroad Problem."

He went to the pains of reducing his proposition to the concrete form of a bill which he appends to his paper. He digests this bill in these words:

1.—Congress should incorporate five Federal Railroad Companies for five divisions of the whole country. This corresponds to the plan of the twelve Federal Reserve Banks.

2.—The five Federal Railroad Companies would acquire gradually the stocks and bonds of the present railroad companies, each in its own district, just as the Canadian Government is about to acquire the stock of the Canadian Northern Railway Company. These stocks and bonds would be acquired at their actual value by purchase, exchange or condemnation. The Federal Railroad Companies could obtain the money by the issue of their own stock with 3 per cent dividends guaranteed by the government, with a possible extra 3 per cent if earned, all over 6 per cent to go to the government. Such guaranteed stock would also be issued to provide fresh money for railroad extensions and additional facilities; also to acquire from time to time at their actual value the present outstanding railroad obligations. The guaranteed dividends could be at a higher rate than 3 per cent, if necessary, and would vary from time to time according to the general conditions, but when once fixed as to any particular issue would not be subsequently changed for that issue.

3.—The Federal Railroad Companies would then control the present railroad companies and could take over their tangible property if the state charters ceased to be desirable, or could condemn the railroads if necessary.

4.—A Federal Railroad Board (similar to the present Federal Reserve Board) nominated by the President and confirmed by the Senate, would name the directors of the five Federal Railroad Companies and would control the finances of those companies and regulate all railroad rates and service.

5.—The plan embodies the idea of government control and government financial responsibility (reduced to a minimum) without government ownership.

The plan contemplates the acquirement by these federal railroad companies not only of the present railroad stocks and bonds, but the railroads themselves by condemnation if necessary. The learned author replies to the suggestion that his plan merely draws "a thin veil over government ownership" by saying "its sole purpose is to avert government ownership"; that government ownership would mean an additional national debt of about twenty billion dollars, while his plan would not. Yet his plans guarantee minimum dividends, and certainly dividends come behind all operating expenses and fixed charges. One had as well owe a debt literally as to underwrite indefinite payment of dividends on stock of the corporation which does owe it. For the same reason, while state taxation may be continued (by permission of the federal government only after it acquires the railroads under said plan), the taxes paid would be chargeable to earnings before dividends could be declared. Hence the government guaranty of dividends would underwrite the payment of taxes due the states. Further quoting from Mr. Cook:

All this is to be done gradually, to avoid shocks, waste, unfair prices and hasty inexperience. The railroads themselves, however, propose to you that Congress shall pass a law that the present railroads shall take out Federal charters at once or else cease doing interstate business on a certain date. This is to be done under power of Congress to "regulate" commerce. Power to "regulate" \$17,000,000,000 of property is alleged to give power to destroy \$17,000,000,000 by forbidding its use unless it turns itself inside out by accepting a federal charter. That is hardly "due process of law." To the ordinary mind it would seem that the penalty of death does not fit the fictitious crime of holding on to a state charter which everybody admits is legal. . . .

And the old corporations are to continue. Certainly Congress cannot dissolve them, and hence the new Federal corporations will have two charters, one from the state and one from Congress, with inextricable conflict, litigation and Pandora box confusion. The railroads themselves cannot afford to have compound charters. We would still have conflict of state regulation with national regulation; state commissions with Interstate Commerce Commission; state perception with national intervention.

It is a fair deduction that the creation of regional federal holding companies in Mr. Cook's plan was designed as a substitute for federal incorporation of existing railroad companies. His novel and interesting plan is an application to the railroads of the organic plan of the federal reserve banking system. It is submitted that the parallelism is carried too far. A banking corporation has no physical attachment to its location. Being purely a financial institution, it is capable of complete liquidation without materially affecting the particular community it was wont to serve. Not so with a railroad. Once established and located, it becomes an integral part of the life of the communities it traverses. Investment in real estate for all commercial, industrial and domestic uses is invited. Much of the value, and frequently all of the utility, of such property springs from and depends upon the continued operation of the railroad. The elements of support and expansion of banks are liquid and easily converted, while with railroads they are permanent physical additions, such as yards, terminals, warehouses, etc.

The location of districts, and establishment of federal reserve banks therein, serve a useful purpose in stabilizing and equalizing the available banking capital and reserves. Districts for the general operation of government-controlled railroads would serve no useful purpose, but would tend to increase the opportunities for political interference in playing one section against another, although the

country may be divided into regional districts for special purposes from time to time.

### A FEDERAL RAILROAD BOARD

If, however, the suggestion of regional federal railroad holding companies, which Mr. Cook elaborates, is not feasible, the establishment of a Federal Railroad Board along the lines suggested by him is a most valuable element in the solution of the problem of permanent and practical government control of railroads short of government ownership. Omitting the functions and attributes applicable to the holding companies, the composition of this Board is admirably stated by Mr. Cook as follows:

A Federal Railroad Board is hereby created which shall consist of six members, one to be the Secretary of Railroads, and the remaining five members to be appointed by the President of the United States, by and with the advice and consent of the Senate. In selecting the said five members of the Federal Railroad Board, not more than one shall be selected from any one Federal Railroad district. The said five members shall devote their entire time to the business of the Federal Railroad Board and shall each receive an annual salary of twelve thousand dollars, payable monthly, together with actual necessary traveling expenses.

No Senator or Representative in Congress shall during his term of office, or for five years thereafter, be a member of the Federal Railroad Board. The members of the said Board shall be ineligible during the time they are in office, and for two years thereafter, to hold any office, position or employment in any railroad company, and shall not, during that time, hold or own stock therein. At least one of said five members shall be a person, experienced in the management and operation of railroads. One member shall be designated by the President to serve two years, one for four, one for six, one for eight and one for ten years; and thereafter, each member so appointed shall serve for a term of ten years unless removed for cause by the President.

As the function of this Board is to control and regulate rates, securities, service and operation, it would obviously supersede the Interstate Commerce Commission.

Full credit is due Mr. Cook for the valuable suggestions he has made, but it is submitted that the adoption of his plan would but open an easy pathway to government ownership instead of proving a substitute for it.

### THE FEDERAL INCORPORATION OF RAILROADS

The idea of federal incorporation of railroads hitherto developed by the representatives of the railroad interests before the Congressional Joint Committee seems to contemplate merely the



creation of new federal railroad companies into which existing systems are to be transferred, and this idea seems to have been in the mind of Mr. Cook when he criticizes the proposed plan as being an arbitrary and summary transfer of the title to \$17,000,000,000 of property from the present owners to new corporations. Obviously, such a proceeding would not only be illegal and unconstitutional, but wholly impractical. However, there seems to be neither a constitutional nor practical objection to nationalizing existing state railroad companies just as under the Act of Congress any state bank may be nationalized.

It is settled law that the conversion of a state bank into a national bank does not destroy the identity or corporate existence of the bank nor discharge it as a national bank from any of its liabilities outstanding at the time of the conversion. Such conversion does not close the business of banking under the state charter, but simply results in a continuation of the same body with the same officers and stockholders, the same property, assets and banking business under a changed jurisdiction. It remains one and the same bank and goes on doing business uninterruptedly.<sup>1</sup>

In the earlier history of this government, the question of jurisdiction of Congress over banking business occasioned much litigation and bitter diversity of political opinion, until finally settled by the authoritative ruling of the Supreme Court under Chief Justice Marshall.<sup>2</sup> Certainly the basis of jurisdiction over banks is no firmer than the express commitment to Congress of exclusive jurisdiction to regulate interstate commerce. Inasmuch, however, as the basis of the jurisdiction of Congress over banks rests upon the general delegation of power to execute other powers in the Constitution, a bank must become an instrument in the prosecution of the fiscal operations of the government before Congress obtains jurisdiction. In like manner, a railroad created by a state must engage in interstate commerce before jurisdiction over it is vested in Congress. But nationalization of a bank is a condition precedent to its becoming an instrument in the prosecution of the fiscal operations of the government, whereas a state railroad is authorized to engage in interstate commerce (in the absence of a law of Congress prohibiting it) without the necessity of a federal charter.

<sup>1</sup> *Metropolitan National Bank v. Claggett*, 141 U. S. 520.

<sup>2</sup> *McCulloch v. Maryland*, 4 Wheaton, 316.

This distinction is most important when you come to consider whether or not Congress can compel a state corporation to become a national corporation. It may or may not be within the power of Congress to compel a state bank to become an instrument in the prosecution of the national government's fiscal operations by taking out a federal charter. That question is foreign to the present discussion. That Congress has the power to *compel* a railroad corporation created by a state and engaged in interstate commerce, to take out a federal charter is a condition precedent to the inauguration of the plan herein proposed. Whether or not this power exists is, therefore, a question which demands solution.

The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else.<sup>3</sup> It was, therefore, held to be within the discretion of Congress to create and use banks as convenient, useful and essential instruments in the prosecution of the fiscal operations of the government. The power to do so is derived from the general clause delegating power to make all laws necessary or proper to execute the other powers delegated in the Constitution.

It is hoped this paper will demonstrate that in exactly the same way Congress may transform state railroads into federal railroads. If, in its discretion, such action is necessary and proper in execution of its power to regulate commerce, and where any given railroad is already engaged in interstate commerce, it may be compelled to become a federal railroad corporation if Congress so enacts.

In the nature of the case, railroads created by state legislation cannot, as a matter of right, exercise their corporate powers outside of the territorial limits of the state creating them. In *Bank of Augusta v. Earle* (13 Peters, 519), the Supreme Court, speaking through Chief Justice Taney, says:

It is very true that a corporation can have no legal existence outside of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law and by force of law; and where that law ceases to operate and is no longer obligatory, a corporation can have no existence. It must dwell in the place of its creation and cannot migrate to another sovereignty.

Nor can two or more states act in concert for the purpose of creating an interstate railroad. This was attempted about the middle of the last century by the states of Ohio and Indiana.

<sup>3</sup> *McCulloch v. Maryland*, 4 Wheaton, 316.

Acting conjointly, these states made an honest effort to create a single railroad corporation to operate across their respective boundaries through their respective territories. When called upon to pass upon the question of whether one or two corporations was thus created, the Supreme Court, speaking through Chief Justice Taney in the case of *Ohio & Miss. Railroad Co. v. Wheeler*, (1st Black, 286), said:

It is true that a corporation by the name and style of the plaintiff appears to have been chartered by the States of Indiana and Ohio, clothed with the same capacities and powers and intended to accomplish the same objects, and it is spoken of in the laws of the states as one corporate body, exercising the same powers and fulfilling the same duties in both states. Yet, it has no legal existence in either state, except by the laws of the state. And neither state could confer on it a corporate existence in the other, nor add to nor diminish the powers to be there exercised. It may, indeed, be composed of and represent, under a corporate name, the same natural person. But the legal entity or person, which exists by force of law, can have no existence beyond the limits of the State or sovereignty which brings it into life and endues it with its faculties and powers.

It follows that the exercise of corporate functions of a state railroad corporation beyond the limits of the state bestowing them must, under our system, be based on comity between the states. While the intimate union of the states, as members of the same political family, no doubt created a greater degree of comity than exists between foreign nations, yet when the interest or policy of any state requires it to restrict the rule of comity, it has but to declare its will, and the further exercise of rights resting on comity ceases. Therefore, a corporate creature of one state doing business in another state is exercising a privilege and not a legal right.

From what has been said, it becomes apparent that it is entirely without the power of a state, or any combination of states, short of the Union as a whole, to confer upon a single railroad corporation the express power to engage in interstate commerce. To attempt to do so would be a contradiction in terms, for a state has no power, by virtue of its grant, to authorize a railroad incorporated by it to do business in another state; and yet the transaction of business between two states is the very essence of interstate commerce. The "power to regulate commerce" conferred by the Federal Constitution on Congress is the power to prescribe the rule by which "commerce" is to be governed. Like all other powers vested in Congress, it is complete in itself, may be exercised to its utmost

extent, and acknowledges no limitations other than those prescribed by the Constitution.

Any railroad system engaged in interstate commerce, unless already operating under a federal charter, must be made up of constituent companies created by the several states through which the system operates. By the combination and consolidation of these railroads into an interstate system of railroads, an element has entered into the structure of the system as a whole which is different from and in addition to anything derived from the respective charters of the constituent companies. That element is the *legal right* of interstate carriage as distinguished from the *privilege* of interstate commerce, resting on comity. Plenary authority over the system, thus becoming an integral part of interstate commerce, is thereby vested in the Congress of the United States. If Congress, in its wisdom, legislates that the constituent companies who owe allegiance to the several states creating them, should, in their combined functions forming an interstate system, become a national corporation, there would seem to be no legal obstacle to such relation being compelled.

This is true because such a combination and consolidation into an interstate system is impossible except by the voluntary assent and coöperation of the states and the several railroad corporations themselves. The states must expressly authorize such combinations and the companies must take the necessary corporate action to bring them about. During the early legal history of railroads in this country, the states were jealous of such combinations and granted power to enter them with reluctance. The benefits of such enlargement of facilities became so obvious that this attitude soon changed into acquiescence and encouragement, and general laws authorizing such combinations, *where competition was not interfered with*, became universal. More and more the public is now coming to see that competition between railroads is inherently wasteful and must be done away with. The results following the coöperation of the great systems through the War Board, and in spite of the anti-trust laws, have demonstrated how unwise our railroad legislation has been in the past.

The necessary consequence of combining two or more railroads created in different states into one operating machine is to convert the system into an instrumentality of interstate commerce. All

parties participating in such a change of status are charged with knowledge that the unlimited power vested in Congress to regulate commerce at once attaches to all the activities of this instrumentality which enter as elements into interstate commerce.

If Congress exercises this power to compel federal incorporation, neither the states creating the constituent companies and authorizing their combination into one system, nor the corporations themselves, can object on the ground that such an act (to be enforced only by forbidding the use of such property in interstate commerce except through the instrumentality of a federal charter), would not conform to the "due process of law" demanded by the Constitution. This is so because all parties have voluntarily placed themselves within the rightful exercise of this power, and the extent to which it is exercised is exclusively within the discretion of Congress.

We thus have the necessary conditions to action by Congress compelling interstate carriers to become national corporations, namely: (a) They are already engaged in interstate commerce (not as a matter of grace, but as a matter of legal right), and therefore within the jurisdiction of Congress, which becomes exclusive when exercised; (b) Congress is clothed with full discretion to determine whether or not its power to regulate makes it necessary and desirable that such instrumentalities should be nationalized. It seems to follow as a necessary consequence that with the power and the will to exercise it, there is a clear pathway to the point where Congress may compel interstate carriers to take out federal charters.

#### NATIONALIZING THE RAILROADS

The great practical difficulty which has hitherto confronted those who contemplated nationalizing the railroads has been a lack of well defined means for transforming and transferring the variegated contract obligations and liabilities of interstate carriers now outstanding, into obligations and liabilities of new corporations which the federal government might create. If, instead of creating an entirely new corporation, proper legislation be passed by Congress to convert existing railroad companies into federal railroad companies, these outstanding obligations and liabilities will not thereby be affected. The great tangle of contractual relations springing from leases, sub-leases, majority stock control, absolute

ownership, and all of the kaleidoscopic arrangements by which the constituent elements of the several interstate systems have been thrown together, would remain after nationalization as effectually in operation as before. The identity of the old corporations would not be changed; there would not be a state corporation and a federal corporation, but only the corporation originally created by the state with its allegiance transferred to the nation. Some may say that this would place the imprimatur of federal sanction upon outstanding securities which have been in some cases over-issued, and which over-issues are supposed in some quarters to be a great evil.

It is not certain that the issuance of these securities under the old, unrestricted and unregulated methods has been an evil. It is very doubtful whether the railroad systems of the United States could have procured the capital necessary for their construction except under the old speculative method of issuing their securities. It is not reasonable to expect a capitalist to invest his money on a low interest basis in a new enterprise, the success of which remains to be demonstrated. The history of railroad construction is, almost without exception, that the original builders of railroads lose their initial investments. These investments would have been withheld altogether but for the possibility of very large speculative profits. The development of these systems, with a few exceptions, has shown that the amount of these securities has not been excessive, and their value has at all times been regulated and controlled by the inexorable law of public demand. The price of such securities, fluctuating as it does, is controlled by a law more uniform and universal in its application than any legislative act could possibly be. That law would disturb the arbitrary legislative value of such securities before the ink could dry on the signature of the executive approving such an act. Neither the public nor the investor will suffer by leaving existing securities to the operation of the law of supply and demand which fixes the market price of everything.

It is not within the limits of this paper to go into much detail as to the functions of the proposed Federal Railroad Board. One complication frequently arising under our present system could be obviated under the new plan in such way as to remove one of the weaknesses in the ante-bellum system of management. When a given railroad fails to prove a financial success—let the reasons be

what they may—an embarrassing situation at once arises. The community it serves is vitally interested in its continued operation. Its public service cannot be abandoned. It cannot be liquidated and eliminated, as a bank is, without vitally affecting the section it traverses. Receivership and court operation ensue, and reorganization follows. This process is all too familiar in all sections, and is the underlying cause of the concentration of railroad holdings in the money centers of the East. It is up to the bondholders to reorganize, and they are thus compelled to take over the properties whether they want to or not.

Under no plan hitherto suggested is any satisfactory solution of the difficulty presented. The local community has practically no interest in these receivership proceedings, for it has come to believe that, whatever happens, the railroad must continue to operate and only in its continued operation are those interested who have no financial holdings in the company. If Congress would bestow upon the Federal Railroad Board power and discretion to authorize the abandonment and dismantling of a railroad which had proved a financial failure, and consequently not a public necessity, these people who had made investments upon the faith of the continued operation of the road would at once have a vital interest in its continuance, and from an attitude of indifference they would be converted into earnest advocates of such conservative management as would insure the continued service of the particular line in question. In such circumstances, it would become a matter of great concern to each community traversed by a railroad to see that its directorate and its executives were on the job of successful railroad operation, rather than engaged in the questionable practice of speculation in railroad exploitation, which, in some cases in the not distant past, have proved such a stench in the nostrils of the public. The same interest would have a healthful tendency to keep politics out of railroad management and, generally, would result in the public's keeping a very close watch on the situation as a whole.

#### THE STATUS OF STATE RAILROAD COMMISSIONS

Another matter of widespread interest is the relation of the several state railroad commissions to the situation which would be created if the plan herein proposed became operative. Notwith-



standing the fact that a large percentage of the several state railroad commissioners have committed themselves to the wisdom of federal incorporation of interstate carriers, thereby transferring exclusive jurisdiction to the federal authorities, a large number of the state commissioners naturally oppose such a course on the idea that it would leave them without sufficient functions to perform to justify the existence of their offices. It is submitted that this is not the case. The several state commissioners will have a broad and busy field of usefulness, after the entire jurisdiction over interstate carriers is transferred to the general government, in looking after the public utilities companies and the local regulation of railroads, which it is proposed to leave under the jurisdiction of the several states. A dispassionate consideration of the question by these very intelligent gentlemen now occupying positions on the several boards of state commissioners cannot fail to convince them of the soundness of this suggestion, and when the matter is properly understood and digested, all opposition to the change of regulation will no doubt disappear.

Until otherwise provided by Act of Congress, the several states should have jurisdiction over these national railroad corporations in the following particulars:

(a) In all suits against said corporations where legal venue exists and lawful service may be had.

(b) To make reasonable police regulations: 1st, as to separation of different races in the several stations and on local trains on a national railroad; 2d, as to the sanitary appliances and their uses while railroad cars are within the corporate limits of any municipality; and, 3d, as to the use and sale of intoxicating liquors on the premises or cars of such railroads.

(c) To regulate reasonably national railroads in the matter of grade crossings, stock-gaps and right-of-way fences.

(d) Any city having a population of not less than 150,000 according to the last preceding census of the United States should have jurisdiction, if thereto authorized by its charter, to regulate the motive power of national railroads for the movement of trains and cars within the corporate limits of such cities.

#### TAXES, RATES AND SECURITIES

Said nationalized railroad corporations should be uniformly taxed by the federal government a reasonable percentum of their gross receipts and their physical properties and securities exempted

from all other form of taxation. The taxes thus imposed should be apportioned as follows: one-fourth to the states, according to mileage in the several states; one-fourth to the several incorporated towns and cities into or through which the lines of said railroads may run, in proportion to their population as declared by the last preceding United States census; one-fourth to the several counties through which the lines of said railroad companies run, in proportion to the mileage thereof in each of said counties; and the remaining one-fourth covered into the Treasury of the United States—all expenses of collecting said taxes to be deducted before apportionment.

The fabric of freight rates is so pervasive and so intricate that the promulgation of rates by state commissions which are not in consonance with the interstate rates, filed with the Interstate Commerce Commission, have in the past greatly deranged its delicate pattern. This derangement became so acute as to culminate in what is known as the Shreveport Case,<sup>4</sup> which is now being followed by the litigation in Texas, growing out of injunction issued by the three-judge District Court of the United States against the enforcement of the State Railroad Commission rates. This experience demonstrates that it is unwise for the regulation of railroad freight rates to be vested in more than one body. When the railroads have become national corporations, there would be no difficulty in transferring to the federal authorities the entire subject of freight rates, both interstate and intrastate. This could be done without the condition precedent that the intrastate rate affects the interstate rate, but on the much broader ground that the corporation itself is a federal instrumentality and as much subject to federal control of its charges as a national bank is to federal control of its interest rates, to the exclusion of state legislation on the subject.

With the latitude afforded the Federal Board of Control of railroad operations under the plan here proposed, there would be no difficulty in so adjusting rates as to allow greater compensation to some lines than to others. One of the greatest difficulties under the old régime was to obviate the injustice to the small line located in sparsely settled territory in having to do this service for the same rate of compensation as a road located in a densely populated section. The great trouble has been to fix a rate which would not starve the small poor line and at the same time create too much

<sup>4</sup>*Houston & Texas Central Ry. Co. v. U. S.* 234 U. S., 342.

revenue for the large rich line. There would be no legal objection to the Federal Railroad Board's fixing a basic rate with percentages of increase in various sections. For this purpose, a division of the country into regions or districts would be very useful.

It goes without saying that the Federal Railroad Board would have entire and exclusive control of the issuance of all new securities by the nationalized railroad companies.

### POOLING OPERATIONS

Experience under the excellent work of the Federal War Board, which will be accentuated under the government operation for war purposes, has disclosed that great economies may be realized by pooling business under certain conditions. While pooling is a very difficult matter with segregated ownership of the several lines, it would be practicable to work out a plan whereby certain sections of the country, or the transportation of certain commodities, or the transportation of all commodities during certain seasons, might be pooled and the proceeds equitably distributed to the members of the pool so as to prevent wasted energy and increase the efficiency and working capacity of all parties concerned. While such a provision would *pro tanto* modify the provisions of the anti-trust laws, there seems little doubt but that public opinion will justify such modification by the time the necessity for it arrives. Many other functions of the Federal Railroad Board will occur to the thoughtful minds of men familiar with railroad matters.

When the Congress has transferred the allegiance of the interstate carriers from the several states to the federal government, and they thereby become its own creatures, many matters of regulation which are now without the power of Congress, will come within its jurisdiction, and experience will, from time to time, suggest many forms of regulation which hitherto have been neither legal nor practical; such, for instance, as limitation of dividends, creation of sinking funds, setting up reserves, and application of surplus to extensions and improvements.

The basic principles of the plan herein suggested thus appear to be the conversion of all interstate carriers into creatures of federal law and placing over them a competent board of control, not only in the matter of rates and regulatory rules such as have been within

the limitations of the Interstate Commerce Commission, but of the physical operations of the companies.

It will be conceded that under our form of government, the greatest danger to any successful plan of federal control of the operations of the railroads, whether through outright ownership or otherwise, is political influence and intermeddling. This danger is so obvious and so great in connection with government ownership, that it outweighs every economic argument which can be adduced in favor of government ownership. It is submitted that, under the plan herein proposed, this danger is reduced to the minimum by the creation of a department of the government for the operation of railroads and the appointment therein by the President of executive men of proven ability, with long terms of office and good salaries. Men of large caliber will be available, and it is fair to assume that pride in the successful discharge of their high duties will forestall any native proclivities towards political activities, which might otherwise develop.

It is hoped the suggestions of this paper may start discussion of the subject, and that by the time government operation under the present arrangement becomes no longer necessary, a satisfactory plan for restoring the railroads to the possession and operation of their rightful owners will have been provided. No plan can succeed that does not command the approval of public sentiment, and the promise and potency of this and all similar suggestions must spring from intelligent consideration and disinterested discussion.

## THE NECESSITY FOR PUBLIC OWNERSHIP OF THE RAILWAYS

BY FREDERIC C. HOWE

Objections to the public ownership of the railways has for the most part been narrowly confined to the dangers of the spoils system, the possible activity of a great army of employes, the alleged incompetence of the government, its unwillingness to make improvements, and the necessity of keeping alive opportunities for individual initiative in this the greatest of all industrial activities of the nation.

But these allegations, even if true, are very secondary to the main question. The most important question before any people is the preservation of industrial and political liberty on the one hand, and the maintenance and development of the state on the other. And both of these things are all but impossible under private ownership of the railways.

### POLITICAL INTEGRATION OF THE NATION

It is assumed that the political activities of the railroads have come to an end. "We are out of politics" is a frequent assertion of officials. The vulgar corruption of a few years ago may be in large part ended by the exposure and by the laws which have been passed; but a far more subtle, insidious control is maintained over the political life of the nation by the ramified activities of the railroads and the corporations identified with the railroads. It is no longer necessary to bribe men as it was a few years ago. An examination of the legislatures of our states shows a preponderatingly large number of railway attorneys within the membership. Judges of both federal and state courts are advanced from the railway legal departments to the bench. The constitutional conventions of New York, Ohio and Michigan recently held were filled with railway attorneys; and in New York and Michigan the constitutions which issued from their hands shielded and protected not only the railroads but the local public utility corporations. Chambers of commerce are ostensibly organizations of industry and trade. Yet they either cannot or dare not represent their membership. In most in-

stances they cannot. Instead of being organizations for the up-building of the community as they are in many foreign countries they are too often interlaced with privileged interests that control their views on important public questions. The same is true of the press. It, too, is controlled and moulded by ownership, by advertisers and by the expenditure of millions of dollars for advertising. At the time of the threatened strike of the railway operatives a year ago it was stated that three million dollars was spent in a single day by the railways in presenting their claims.

In addition the wealth and talent of the nation is divorced from the nation. Attorneys, bankers, big business men are in constant conflict with the government. Railway officials fear regulation, taxation, measures for full crews and the like. A great staff of men is maintained for the presentation of claims before the Interstate Commerce Commission and for fighting off cases before the courts, while publicity agencies utilize every means for discrediting the government and bringing it into that distrust if not contempt which is largely the result of the innuendoes and activities of privileged interests.

Government ownership would end this conflict. It would free the talent of the nation. Men's patriotism would run free, unpoisoned by their private interests. Our city councils, legislatures and Congress would appeal to men of big talents who now are divorced from participation in politics because of the interests which they represent. The American people are not more unfit for self government than other peoples. This is not the trouble. The real trouble is that we have made it almost impossible for strong men and capable men to be identified with the state. The positions of power and wealth are to be had in corporations in constant conflict with the nation; they are monopoly privileges of various kinds which depend upon government favor. We must end this divorce. There is just as irrepressible a conflict between privilege and democracy as there was between slavery and freedom.

#### INDUSTRIAL INTEGRATION

What is true of the talent of America is equally true of our industrial life. Our circulatory system is owned by eighteen hundred quarreling, competing transportation agencies, each of which is in conflict with the others; and all of which are in conflict with the

producers and consumers. Transportation is run for profit. It should be the agency of service. And the great profits of the railroads are from anti-social service. To take but two from a score of examples. First, railroads are interested in long haul traffic. The community is interested in short haul traffic. More money is to be made in transporting goods across the continent than from a near-by point. Every traffic employe knows this fact. Fifty years ago food and cattle were produced for local markets, as is the case in other countries. Today the food of cities like New York and Philadelphia comes from California, Florida and distant points. Farmers in New York State cannot get transportation service. They are driven out of business. They abandon their farms. Yet while these farmers are clamorous for cars, food trains come in with the regularity of express service from Oregon and California. The same is true of cattle. At one time every farmer raised cattle, sheep and hogs. The transportation of meat was taken over by the great packers of Chicago, Kansas City and Omaha. They control the transportation of food through the ownership of refrigerator cars, and they, in coöperation with the railroads, have destroyed the raising of cattle all over the country. They compel cattle to be hauled from distant California to Chicago to be killed. It is then hauled back to California to be consumed. The farmers of the northwest ship their grain to Minneapolis to be milled. It is then shipped back to the northwest to be consumed. The same is true of almost every other industry. A large part of the traffic of the country is sent round about Robin Hood's barn when it should be sent by the most direct route possible. The cost of transportation is increased, industry is destroyed, and the whole industrial, social and agricultural life of the country is on a false basis.

Second, the classifications of railway freight are for the purpose of making the maximum profit. There are hundreds of thousands of classifications. On some days a hundred thousand or more changes are filed with the Interstate Commerce Commission. It would take a week's work of a corps of men just to keep up with these changes. In European countries where government ownership prevails classifications are simple. They are printed in a little rate book that every business man carries in his pocket. They can be understood by anyone. A man knows instantly what his freight charge will be, just as he knows the cost of a telephone call.



Through these classifications discriminations and advantages are given one set of shippers at the expense of another. The old kind of discrimination is gone; but the new kind is just as harmful, and possibly just as universal as was the old. Special routings are given. Differentials, switching advantages, terminal advantages, etc., are allowed. No shipper really knows whether he is on an even keel with his competitor or not.

These are but indicative of a score of conditions which prevail; conditions which must prevail so long as transportation is an agency of profit rather than of service. The sole aim of railroad administration is to make as good a showing as possible. And railway operators are not to be blamed for this. They look upon their industry just as does every other business man. But the state is interested in rendering maximum service to the largest number of people at the minimum cost. And this is only possible through government ownership.

We can get some vision of the social use of railroads by the methods employed in Germany, Australia, Switzerland, Denmark and other states where the conscious purpose of railroad administration is at all times the upbuilding of the country. Denmark utilizes her railroads for agriculture; for the placing of her goods in England and Germany in the quickest possible time at the lowest possible rates. The same is true of Belgium, from which country special trains are run to Zeebrugge, where they connect with government owned steamers for London and to Paris. In Australia the railroads are exclusively a state agency. They aid cattlemen, farmers, dairymen. Each station agent is a government employe. He receives the farmers' products. He sends them to a government terminal or to a public slaughter-house. They are shipped even to England under government control. The farmer gets all that he produces. He is free from discriminations, and there are no middlemen whatever between him and his consumer.

The industrial development of Germany is largely a railroad development. In Germany railroads are run for industry. The chambers of commerce and agricultural associations form a part of the administration. Special rates are given ship-builders to upbuild the merchant marine. Similar rates are given on raw materials. Industries and towns are built up in this way; while the great export trade of Germany is partly traceable to the aids and

special rates made on export products. This is but indicative of the thousands of devices that can be developed for upbuilding the state when the transportation agencies are in public hands.

#### INTEGRATION OF PHYSICAL EQUIPMENT

Under private ownership there are several hundred railroads built as a separate entity and operated as such. Each railroad has its own terminals, passenger stations, yards. One terminal may be filled with cars awaiting freight; a near-by terminal may be filled with freight clamorous for cars. Empty trains on one railroad pass other empty trains on another railroad going in the opposite direction in search of cargoes. There is terrible waste: waste like that of having a half dozen water plants in the same city; for each railroad has to have terminals, freight houses, passenger stations. It has to have docks, lighterage and warehouses. It has to be equipped for the maximum load.

It is impossible to mobilize all these agencies with hundreds of different railroads maintaining their separate existence. But two railroads enter the city of New York. The New York Central is the only railroad having a freight terminal in Manhattan and it uses every possible means to keep other railroads out. A half dozen other systems maintain separate terminals on the Jersey shore. They ought to be united into a single great terminal. And they ought all to use the Pennsylvania and New York Central facilities in New York City. In Chicago there are a score of terminals; a half dozen great passenger stations. There is tremendous wastage in real estate and in investment, and far greater wastage to the industrial life of the city.

In those countries where the railroads are owned by the government there is usually but one union passenger terminal. The passenger stations are commanding structures. They are the portals of the city. All railway lines enter there. This means great convenience to the public and great economy in operation.

Even greater wastage is involved in the suppression of the water transportation facilities of America. The railroads own the water-fronts of our cities. They will not develop them or permit them to be developed because water transportation is cheaper than rail transportation. It costs one-seventh as much to carry freight by water as it does by rail. As a consequence coast-wise shipping

is discouraged or destroyed. Our rivers carry less freight than they did a quarter of a century ago. Canals have been bought up, or through political control of the state they have been put out of business. The Great Lakes from Duluth to Buffalo, the greatest water-way in the world, is little more than a private possession of the railroads and the steel trust. The government has spent tens of millions of dollars on harbors, almost every one of which is under the control of the railroads and the iron and steel industries. A generation ago the Great Lakes were covered with independent fleets. They have been put out of business. Shipping has decreased. This water-way is almost a private possession; while great cities are unable to make use of the water-fronts for the upbuilding of industry or transportation. The State of New York has spent tens of millions of dollars on the Erie Canal. It carries less tonnage than it did a quarter of a century ago. It should be part of a continuous water transportation system from Duluth to the seaboard.

Only the government can work out an integration of rail and water transportation as has been done in Germany and Belgium, in which countries heavy bulk traffic is carried by water, the railroads being reserved for other freight. Immense economies can be made in transportation, and great savings in constructural arrangements and motive power if the rivers, water-ways and seas are permitted to perform the service for which they are naturally intended. This is only possible to the government itself.

Similar colossal economies can be brought about through the substitution of hydro-electric power for coal. There is two million horse power going to waste in New York State alone. There are rivers that could be harnessed. Even the Mississippi could be made to operate our railroads; while the Rocky Mountains and Sierra Nevadas would provide sufficient power to free the railroads of the west from dependence upon coal. A great hydro-electric development organized in a comprehensive way would provide power and light for industry, for our cities, even for the farmers. Such a program has been carried out in Switzerland, in Bavaria, in the province of Ontario, in which states the white coal is supplanting the black coal, with immense savings to industry.

It is probable that the consolidation of the railroads, the unification of terminals, the utilization of motive power and cars to

their capacity would involve savings of hundreds of millions of dollars in transportation cost. Similar economies would be made through the substitution of water for rail transport. This would amount to tens of millions annually, while the substitution of hydro-electric power for coal would mean great economies in transportation costs and a saving of our fuel as well.

#### INTEGRATION OF OPERATION

The railroads of the country should be organized like an army. There should not be hundreds of different railways, each one an entity by itself. The 240,000 miles should be organized as a unit. It is far easier to mobilize railroad service where needed than it is to mobilize an army. If the cars and motive power of the entire country were directed from a single point as are the Pullman cars, the express service, the refrigerator cars, the fast freight lines, there would be adequate facilities for the needs of the country, and a great speeding up in their use as well.

Similar economies would be made in the accounting and clerical operations. Today millions of different rates and classifications are made, which require endless bookkeeping. They involve confusion for railroads and shippers. This could be done away with by unification of transportation and the simplification of classifications.

There are tens of thousands of agents who solicit freight for competing lines. There are thousands of other men engaged in attending to the details of inter-railway relations. In every large city there are a score of competing ticket offices and competing representatives of distant freight lines, all of which cost has to be maintained by the public. Every railroad maintains a highly paid legal staff. The best legal talent of the country is identified with the railroads; and a large part of their effort is devoted to controversies with the Interstate Commerce Commission, with state railroad commissions, with controlling local politics, with looking after the political side of railroading. This involves a waste of millions of dollars. In addition, each railroad maintains its corps of highly paid officials, many of whose salaries equal that paid the President of the United States. Many of these officials are appointed through favor. These high salaried officials could be largely dispensed with

if the financial motive of railroading were ended and the transportation agencies were dedicated to transportation alone.<sup>1</sup>

Millions of dollars more are spent each year in publicity, on advertising, on making public opinion. Immense sums are paid for the stimulation of traffic over particular lines. The losses to the public from wasteful competition and from political activities are colossal.

#### ECONOMIES

But these economies are relatively small in comparison with the great savings that would come from public ownership. In the first place government securities bear but 4 per cent or 5 per cent interest. In peace times government securities are issued at from 2½ per cent to 3 per cent. Railroad managers insist upon a very much higher return. If 2 per cent were saved upon the securities of the railroads, it would amount to \$400,000,000 a year, or nearly twice as much as the total budget of the Post Office Department.

In addition the railways are taking immense sums out of earnings every year and investing them in the property. This is the way betterments, improvements and extensions are made. Hundreds of millions of dollars are collected from the public each year and converted into capitalization, upon which the public is then asked to pay interest and dividends. It is probably true that billions of dollars of the present capitalization of the railroads has been taken from the people in excessive charges and converted into capital account.

Along with this railroads are capitalizing and insisting upon payment of their increasing land values. Land connected with the city terminals and rights of way is increasing rapidly in value. Agricultural land doubled in value between 1900 and 1910. City land increases with about the same rapidity. A single railroad in one of the southern states in its hearing before the Valuation Committee of the Interstate Commerce Commission insisted that it be allowed \$880,000 for land that had cost but \$71,000.

It is probable that several billion dollars have been added to the capitalization of the railroads from the unearned increment of land

<sup>1</sup> The salaries paid administrative officials by the railways amounts to \$340,000,000 a year. As to how much of this is for salaries of men engaged in the actual operation of the properties is not discussed.

and rights of way held by the railroads. This is a social value. It is created by the community. It is traceable to the growth of population, to industry, to the increasing congestion of the country. Upon this valuation, which is being increased at the rate of hundreds of millions every year, dividends are demanded, while the demand is being made that the people shall pay for a social value which they themselves have created.

All of these increments in value could be saved to the community under government ownership. Then betterments made out of earnings would be owned by those who made them; while increasing land values would remain community values, which they are in effect.

#### FREE THE RESOURCES OF AMERICA

The report of the Pujo Investigating Committee made in 1913 showed a remarkable pyramiding of banking, transportation and industry. Practically all of the great transportation systems of America were under the control of four great banking syndicates located in New York. Railroadings has become an agency of finance rather than of industry. Railroads are operated from New York. They are no longer operated for the promotion of the industrial life of the state. Moreover, and this is the gravest possible menace to industrial freedom, the same group that owns and controls the railroads owns and controls the industrial life of America. Competing industries have to compete against concerns which are interlocked with transportation. Even though it should be true that the grosser violations of a generation ago are ended, there still remain endless privileges, preferences, discriminations and rebates which make it difficult for new industries to operate on equal terms with the great combinations of capital. Moreover, the railroads place in the hands of the bankers control of upwards of \$4,000,000,000 annually. The concentration of banking capital is largely traceable to railway earnings, and this capital in turn is used by the great banks for the maintenance of their monopolies.

Industry in America must be free. It must be free from the menace of railroad discriminations and of credit discriminations as well. The talent of the country must be free from fear. It must be released so that it may venture freely into new industries, new mines and new ventures of every sort. For freedom is of the es-

sence of American life. And we cannot have industrial freedom under privately owned transportation systems.

It is probably no exaggeration to assume that the productive capacity of America would be increased by billions of dollars annually if it were free from the present inadequacies of transportation, if it were assured a free and constant outlet, and if the credit of America were free to encourage a competing industry rather than repress it. Public ownership is necessary to free banking. It is necessary to free the ingenuity, talent and labor of America as well. Today mines are closed two or three days a week because of lack of cars. Industry all over the country is strangled because of its inability to transport its output. Automobiles by the thousands are driven to their destination on their own power; millions of men are unable to work full time; while invested capital is reduced to part time employment because of the discriminations and inadequacy of the transportation agencies of the country whose necessities have grown beyond the possibilities of private control.

#### THE EXPERIENCES OF OTHER COUNTRIES

The experience of America is the experience of other countries. Germany suffered from the same difficulties that confront us, as did Italy and Switzerland. These countries found it necessary to take over their railroads in order that the life of the nation should move freely and fully, and wherever the railroads have been taken over the industrial life of the nation has been greatly aided by the many services which the government was able to render. Just as those agencies that are owned by the cities are operated for service and are integrated into the life of the community, so the transportation agencies become a very different thing when the motive of operation is one of service rather than of private profit. The greatest reason of all for public ownership is the change in the motive of railroad transportation.



# STATE REGULATION OF THE SECURITIES OF RAILROADS AND PUBLIC SERVICE COMPANIES<sup>1</sup>

BY MARY L. BARRON, PH.D.

## POWERS AND PROCEDURE OF PUBLIC SERVICE COMMISSIONS IN RELATION TO SECURITY ISSUES OF PUBLIC SERVICE CORPORATIONS

State control of the security issues of public service corporations has grown by slow stages from an almost complete absence of any checks in the era of special charters to the recent concentration, in a few states, of absolute power in the hands of a commission. The present state laws governing a public utility's security issues are to be found in a few special charter acts, in general statutes, and in special public service commission acts. As the latter represents the most complete method of supervision, particular emphasis is placed on the analysis of this group.

In answer to a deeply felt need of an administrative body to enforce the general laws in regard to railroads and public utility corporations, public service commissions have become so widely established that in 1917 there is only one state which has no kind of public utility commission—Delaware. Twenty-four states, however, have failed to confer on their commissions power to regulate the issuance of securities.<sup>2</sup> Commission control of securities is, therefore, absent from twenty-five states.

All degrees of power from publicity to absolute control have

<sup>1</sup>No secondary material has been used in the preparation of this article. The Public Service Commission Act (summarized in Table I) and the codified laws (Table II) of each state have been analyzed to discover in what manner the security issues of railroads and of public service companies have been subjected to regulation. Since the tables have been arranged so that the exact citation for any subject is easily found, footnote references have been omitted when a statute is analyzed in the text.

<sup>2</sup>Alabama, Arkansas, Colorado, Connecticut, Florida, Idaho, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wyoming.

been conferred over securities on the remaining commissions. Rhode Island's one-paragraph provision covers only the stock, and not the bond, issues of street railways. The powers and the work of this commission in the matter of securities are so slight as to amount to non-regulation. The Pennsylvania and Virginia commissions are of the pure publicity type, their work consisting of the filing of notices of increases of securities. There are ten commissions that are limited to inquiring into the truth of the statements in the corporation's application for approval.<sup>3</sup> Texas has a very stringent law, but one that is enforced not so much through the powers conferred directly on the commission as through the severity of the penalties imposed upon the corporation for any infringement.

Some initiative is permitted all the other commissions by statute. Besides determining the truth of the statements in the application, the commissions of Massachusetts, New Hampshire and New York have power to specify the purposes and to determine the amount of securities reasonably necessary. The commissions of Ohio and Wisconsin have the additional power to decide the character of the securities and to define the terms of issue.

Four commissions have complete and unrestricted power over security issues, that of Vermont deriving its authority from a general provision to prevent overcapitalization, and those of Arizona, California and Illinois from detailed provisions in special public service commission acts.

Less than 20 per cent of the public service commissions have any discretionary powers on questions of capitalization. So incomplete are most of the laws that many commissions, though not permitted by law, have imposed conditions in order to make their control effective in any degree. Commission control over the capitalization of public service corporations, and particularly of railroads, is neither universal nor uniform.

The public commission acts provide for the enforcement of commission control over the security issues of public service corporations and of railroads by prescribing the proceedings necessary to validate an issue.

Previous permission of the commission, evidenced by a certificate of authority, must be had in eighteen states for all securities

<sup>3</sup> District of Columbia, Georgia, Indiana, Kansas, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey.

TABLE I.—ANALYSIS OF THE PROVISIONS OF STATE LAWS RELATIVE TO THE REGULATION OF SECURITY ISSUES BY PUBLIC SERVICE COMMISSIONS

State	Statute conferring power over security issues	Power to issue securities a special privilege	Previous permission required	Previous application necessary	Previous investigation	Recording the certificate required	Accounting for the proceeds required	Penalties	Approval as a guarantee
Arizona	1912, c. 90, sec. 52	52a	52b	..	52b	..	52e	52 d, e, f	52c
California	1911, c. 14, sec. 52	52a	52b	..	52b	74	52e	52 d, e, f	52c
District of Columbia	1913, sec. 8	72	72	..	..	..	..	78-80	..
Georgia	1911, 8	20	8	8	8	..	..	12	..
Illinois	1913, 20-31	20	21	..	21	..	21	23, 24, 25	26
Indiana	1913, 88-93	24a	92	91	92	34	..	26	93
Kansas	1911, 24-27, 34-38	..	25	25	35	36	..	..	..
Maine	1914, 35-38	..	35	35	35	36	..	28	..
Maryland	1910, 180, sec. 27	..	27	16	27	..	..	16	..
Massachusetts	1913, c. 784, sec. 15, 16	..	16	1	1	..	..	2, 3	..
Michigan	1911, 1	..	1	..	..	..	50, 1	50, 2-4	50, 5
Missouri	1913, 54-58	54	57	..	..	58, 1	..	2, 3	..
Nebraska	1909, 1-3	..	1	..	1	..	..	..	..
New Hampshire	1911, 14	..	14a	..	..	..	..	..	..
New Jersey	1911, 14-19	..	18e	..	..	..	..	56	..
New York	1912, 55, 56	..	55	..	55	..	..	60	..
Ohio	1911, 95-93	..	56	57	58	..	..	..	..
Pennsylvania	1913, 4	..	..	4a, b	..	..	..	..	..
Rhode Island	1909, c. 216, 4	4	..	..	..	..	..	..	..
Texas	1905, a 4584, a-m	4584, a	4584, f-h	4584, f, g	..	..	..	4584, j, k, l	4584 m
Vermont	1908, sec. 16	..	16	16	16	..	..	..	..
Virginia	Constitution 1902, 167	..	167	167	..	..	..	..	..
Wisconsin	1913, 1753, 1-22	1753, 2	1753, 9, 1	1753, 9, 4, 6, 8	1753, 9, 2	..	1753, 12	1753, 17, 18, 19	..

All references are to the public utility act of the respective states, passed in the year indicated.

! Does not apply to steam railroads.

† Applies only to street railroads.

issued by a railroad company.<sup>4</sup> The public utility corporations of the same states, with the exception of Texas, are subject to the same provision, and also those of the District of Columbia and Indiana. Rhode Island requires such authority for the stock issues of street railways. The Pennsylvania commission has no power on its own initiative to certify to an issue, but must do so if the corporation applies for a certificate of valuation. In Texas, the certificate is in the form of a notice to the Secretary of State that the law has been complied with, especially that the particular issue does not exceed the value of the property covered by it. The certificate of the other commissions states the amount, purposes and character of the issue; that the amount is not in excess of the amount required for the specified purposes; and that no part of the amount, except when permitted in reference to bonds, is chargeable to operating expense or income. When the commission has power to impose conditions, these are also set forth in the certificate.

A necessary prerequisite to the issue of a certificate is an application by the corporation for approval. The Texas law does not require a previous application, but the rules of the commission call for it in all cases. The laws of several states contain only a very general clause, demanding a written application to be made,<sup>5</sup> while others prescribe the contents of the application.<sup>6</sup> The application contains information on the same subjects to which the commissions must certify in their certificate of authority, namely, the amount, character and purposes of the issue, the terms of the issue, and a description and estimated value of any property or services that are made a basis of the issues.

In two states, Pennsylvania and Virginia, the filing of a similar statement, called a Certificate of Notification in Pennsylvania, meets all the requirements of the law, and the corporation is subject to no further control in matters of capitalization. The duty of the commissions of these states is fulfilled by placing this statement on public file.

Previous investigation of the statements in the application is definitely provided for in the statutes of many states, and in the

<sup>4</sup> Arizona, California, Georgia, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Texas, Vermont, Wisconsin.

<sup>5</sup> Georgia, Maine, Massachusetts, Michigan, New Hampshire, Vermont.

<sup>6</sup> Indiana, Kansas, Ohio, Wisconsin.

case of almost every application the commission conducts an investigation.<sup>7</sup> The commission must hold a public hearing, and is empowered to make additional inquiry, to make a valuation of the property of the corporation, and to examine such witnesses, books, documents and contracts, and to require the filing of such data as it may deem of assistance in reaching a determination.

If the commission decides to permit an issue of securities, its certificate must, in several states<sup>8</sup> be recorded on the books of the company before securities may be issued. In other states, the certificate must be filed with the Secretary of State.<sup>9</sup>

To insure the proper disposition of the proceeds of authorized issues, various provisions are found in the state statutes. Wisconsin may require the utility to perform any act necessary to carry out the provisions of the law. Some states permit their commissions to establish any rules or regulations in their judgment reasonable and necessary to prevent the disposition of the proceeds for any purposes except those designated in the order.<sup>10</sup> A detailed accounting of the proceeds is called for by some laws,<sup>11</sup> and, in practice, by all commissions.

Failure to observe any of the provisions in the act is punishable by *penalties* that operate against the security issued, the corporation, and the officers and employees. The laws of nine states declare all securities void, which do not conform to the law.<sup>12</sup> There is a conflict of opinion as to the power of the commission to validate such illegal issues. Texas,<sup>13</sup> California<sup>14</sup> and New Hampshire<sup>15</sup> require new applications, but Nebraska<sup>16</sup> and Indiana<sup>17</sup> validate the issue.

<sup>7</sup> Arizona, California, Georgia, Illinois, Maine, Maryland, Michigan, Missouri, Nebraska, New Hampshire, New York, Ohio, Vermont, Wisconsin, and Pennsylvania in case of a Certificate of Valuation.

<sup>8</sup> District of Columbia, Kansas, Missouri, Wisconsin.

<sup>9</sup> Texas, New Hampshire, Massachusetts.

<sup>10</sup> Arizona, California, Illinois, Missouri, Wisconsin.

<sup>11</sup> Arizona, California, Illinois, Missouri.

<sup>12</sup> Arizona, California, District of Columbia, Illinois, Kansas, Maine, Ohio, Texas and Wisconsin.

<sup>13</sup> Public Utility Reports Annotated (hereafter referred to as P. U. R.), 1915, E531.

<sup>14</sup> *Id.* A643, 1071.

<sup>15</sup> *Id.* E931.

<sup>16</sup> *Id.* C24.

<sup>17</sup> *Id.* B55.

If there is no need to change the terms of the issue, a validating order would seem sufficient, without compelling the corporation to recall the unauthorized securities and issue an identical new series, with only the authority of the commission added. The penalty imposed on the utility is usually a fine, ranging from \$500 to \$20,000. The agent may be fined \$500 to \$10,000 or imprisoned on a misdemeanor charge in some states, on a felony charge in others, for a term of one to fifteen years, and, in Texas, is personally responsible to the creditors for the full amount of any damage sustained.

The administrative control of security issues is provided for in state statutes by requiring previous permission of a public service commission, which is granted upon application and after investigation. This permission must be recorded in some states upon the books of the corporation or with the Secretary of State. The proceeds from authorized issues must be strictly accounted for. For any failure to obey the law severe penalties are imposed, the least of which is sufficient impetus to a close observance of the provisions of the statutes.

Compelled in twenty-three states to submit to some measure of supervision by a public commission, the public service corporations and railroads are served with a notice in almost all states that the approval of the commission carries no guarantee.<sup>18</sup> The orders of the commission often contain the further condition that such authority shall not be binding upon the commission or any other tribunal as a finding of the value of the applicant's property<sup>19</sup> in any rate or other proceeding. These emphatic declarations that the commission's approval carries no guarantee of value or dividends would seem to uphold the frequently repeated assertion that securities have no relation to rates. In practice, however, the same commissions have considered the return on investment which a particular rate will yield before making any change.<sup>20</sup> Inversely the ability of a company to meet interest charges has been the justification for authority to issue securities.<sup>21</sup>

In rate valuation proceedings, the security issues almost invariably have weight, even in states where there is no power granted

<sup>18</sup> Arizona, California, Illinois, Indiana, Missouri, Pennsylvania, Texas.

<sup>19</sup> P. U. R. 1915, B1072, A557, F795; *id.* 1916, B583, A514.

<sup>20</sup> P. U. R. 1916, A227, A594, C281, C1020, D25.

<sup>21</sup> *Id.* 1915, A744, 749.

to a commission over securities.<sup>22</sup> The general assurances that securities will be considered have been translated into positive action by many commissions, rates being maintained or even raised in order to give a favorable return on the securities.<sup>23</sup> The Massachusetts Public Service Commission has taken the most definite stand in this matter, holding that capital honestly and prudently invested must be taken as a controlling factor in fixing a basis for fair rates,<sup>24</sup> and that the approval of the commission is conclusive evidence that the issue represents legitimate investment.<sup>25</sup>

The consequence of a change of rates upon the market value of securities should be carefully considered by all commissions. If strict observance is required of the provisions that securities are to be issued only in amounts necessary for proper purposes, and that full value in assets is turned into the corporation, the commissions will best guard the public's interests by being generous and fair in rate questions. The ordinary risks of business, however, should not be insured against because of commission approval of securities except that rates should always be sufficient to provide for obsolescence as well as depreciation. The best relationship between the corporation and the public is maintained when a fair return is permitted upon a fair investment, without removing the spur of responsibility for conservative management from the officers of the corporation.

#### STATE STATUTORY LIMITATIONS ON THE ISSUE OF SECURITIES

The *security issues* of public service corporations that are subject to control are defined to be stocks, stock certificates, bonds, notes, trust certificates, or other evidences of indebtedness, payable at more than twelve months after date. No one of the public service acts enters into more detail. The lack of exact definition has been a marked deficiency of all the laws. What constitutes an issuance of such securities was also left for the commissions to determine. As interpreted in the various states, control has been extended far beyond the original issue to bona fide purchasers, or

<sup>22</sup> P. U. R. 1916, D976, 1915, A618.

<sup>23</sup> *Id.* 1916, A349, 276, 506; 1917, A255.

<sup>24</sup> *Id.* 1915, B362; 1917, A331.

<sup>25</sup> *Id.* 1915, E370, F264.





for retention in the treasury to pledged<sup>26</sup> and reissued<sup>27</sup> securities and to issues to effect a reorganization<sup>28</sup> or consolidation.<sup>29</sup>

All securities issued for periods of less than twelve months are exempt from regulation. The Pennsylvania commission may, in its discretion, extend to such securities the provisions that require a certificate of notification to be filed. Wisconsin limits such issues to those that are made for money, requiring the consent of the commission if issued for property or services. Michigan permits an original issue for twenty-four months without consent of the commission. The other states place no restraints upon the issue of such securities. In some states the refunding of such securities, if in the form of an issue running for more than twelve months, must not be carried out without the consent of the commission.<sup>30</sup> In other states, the refunding in whole or in part by any issue of securities of whatever term or character requires the consent of the commission.<sup>31</sup> Illinois further forbids their renewal from time to time, without consent, for an aggregate period of longer than two years. All other states require consent for any refunding issue that is to run for longer than twelve months.

The interstate character of the corporation or of a particular issue may also have the effect of a partial exemption. Some state laws confine supervision to domestic corporations,<sup>32</sup> in which case no part of the securities of a foreign corporation need to be approved. Other states apply the law to all corporations transacting business within the state.<sup>33</sup> The Georgia act could receive the last interpretation, but the commission has refused to take jurisdiction over the stock issues of foreign corporations, or over the bond issues of a corporation engaged in interstate commerce.<sup>34</sup>

The location of the property that is the basis for the issue is

<sup>26</sup> P. U. R. 1916, A42.

<sup>27</sup> *Id.* 1916, C1178.

<sup>28</sup> District of Columbia, New York, Ohio, Wisconsin, Illinois, Texas.

<sup>29</sup> All Public Service Acts, except those of Georgia, Michigan, Texas and Vermont, specifically provide for control over consolidations of railroads or utilities.

<sup>30</sup> Georgia, Indiana, Maryland, Michigan, Missouri, Nebraska, New York, Ohio.

<sup>31</sup> Arizona, California, Illinois.

<sup>32</sup> Maine, Maryland, Nebraska, New York, Vermont.

<sup>33</sup> District of Columbia, Kansas, Michigan, New Hampshire, Ohio, Wisconsin.

<sup>34</sup> National Association of Railroad Commissioners, Proceedings, v. 25, p. 172.

more commonly made the measure for jurisdiction. The acts of Arizona, California and Missouri and the commission ruling of Illinois apply the act to all issues that are based upon property within the state. The Arizona commission interpreted this provision so broadly that it claimed jurisdiction over the bond issue of a foreign corporation, although there was no lien on any property within the state and none of the proceeds were to be spent within the state, because it was not clear that in the event of a foreclosure a deficiency judgment might not be taken against Arizona property.<sup>35</sup>

If the proceeds are to be spent without the state, many commissions lose control. The acts of Massachusetts and of New Hampshire exempt such part of an issue as represents expenditures outside the state. The Massachusetts commission, however, does pass upon all issues by domestic corporations and must be notified of the details of the entire issue by a foreign corporation, if any part of the proceeds are to be spent in Massachusetts. The Ohio commission grants, but does not require, its approval if expenditures are to be made without the state. The Maryland commission claimed full jurisdiction over all issues of securities by domestic corporations, but the courts held that it had no control over securities the proceeds of which were to be spent outside the state.<sup>36</sup> With these exceptions, the laws governing the issuance of securities apply to every form of issue, including pledge, whether by a new, existing, reorganized, or consolidated company, and whether for property, privileges, or services.

There are various limitations as to the kind of security that may be issued under certain circumstances. Those states which permit the issue of securities for operating expenses and replacement require them to be in the form of bonds or notes. Refunding issues must be in the same form as the securities they are retiring, unless a special order is obtained permitting a change.

The most widespread limitation on the class of security to be issued is that which defines the proper *proportion* to be maintained *between bonds and stocks*. There is no limit to bond issues in Mississippi, and several other states give the directors full power to determine the amount. Arizona, California and Illinois permit their commissions to authorize issues of bonds in an amount equal to,

<sup>35</sup> P. U. R. 1916, B8.

<sup>36</sup> 88 Atl. 348.

less than, or greater than the capital stock. The Arizona commission has favored the restriction of bonds to the amount of stock, while that of California has declared that 70 per cent of the capital in the form of bonds is the maximum to be authorized.<sup>37</sup> Bonds were limited to 50 per cent of the capital in the case of a California water company owning wells that might not be permanent.<sup>38</sup> A Connecticut law prevents the issue of bonds in excess of one-half the amount actually expended on the railroad.<sup>39</sup> The Texas law makes the value of the property the limit for bonds. The laws of Indiana and Wisconsin declare in general terms that the indebtedness of the corporation shall bear a reasonable proportion to the stocks issued by the corporation.<sup>40</sup>

The definite proportion that must be maintained between stocks and bonds is prescribed in many states.<sup>41</sup> The most common requirement is that the bonds<sup>42</sup> or total indebtedness<sup>43</sup> shall not exceed the capital stock, modified in Montana and New Mexico by the amount subscribed. Connecticut<sup>44</sup> and New Jersey limit the total indebtedness to the stock paid in, but bonds to twice this amount may be issued in other states.<sup>45</sup> The maximum amount of bonds is limited to two-thirds of the capital stock in Iowa, Nebraska and Utah. In Minnesota, the indebtedness exclusive of mortgage bonds must not exceed two-thirds of the capital stock, but the total indebtedness may be three times the capital stock. An interstate corporation may find itself conforming to the laws of one state only to defy those of another. An established proportion between stocks and bonds is necessary to compel the owners to put into the business enough to make it to their interest to maintain the property in an efficient condition, rather than to exploit it to secure dividends. Merely to condition the amount of bonds on the total securities does not meet the situation, especially if the stock is not fully paid. The bonds should be in proportion to the total value of the assets and not to any quality of the capital stock. In quantity, there is

<sup>37</sup> P. U. R. 1915, A787, D347.

<sup>38</sup> *Id.* 1915, B38.

<sup>39</sup> Code 1902, sec. 3804.

<sup>40</sup> For exact reference see Table II.

<sup>41</sup> Arkansas, Idaho, Maryland, Missouri, Nevada, Ohio.

<sup>42</sup> Idaho, North Dakota, Oklahoma, South Dakota, Washington, Wyoming.

<sup>43</sup> Code 1902, sec. 3804.

<sup>44</sup> Delaware, Massachusetts, Pennsylvania, Washington.

already an overabundance of legislation, but there is need of the adoption of a basis that will give greater definiteness.

Securities of whatever character must be issued only for *legitimate purposes*. The chief duty of the commissions is to see to this requirement. To leave no doubt that the commission's decision is final, many states forbid the utility or railroad to apply the proceeds of securities to any purposes not specified in the commission's certificate,<sup>45</sup> nor in excess of the amount authorized.<sup>46</sup> The majority of commissions are limited at the outset to inquiring whether the issue under consideration is for purposes in accord with the nature of the business carried on by the particular corporation. The unnecessary duplication of facilities by competing companies may continue unchecked.<sup>47</sup> The commissions of Ohio and Vermont have been given the right to reject the applications if not convinced that the proceeds will be spent for the general good of the public, and the acts of California, Arizona and Illinois permit of the same broad interpretation. A few other commissions, as Maine,<sup>48</sup> by a liberal interpretation of their power in regard to certificates of convenience and necessity, may prevent duplication of plants in the interest of the public. Every unnecessary duplication of any part of a public service corporation's plant, used solely for competitive purposes, results in reducing to scrap value that much of the property of one or both companies. Where the evils of competition and its wasteful extravagances are not prevented by public control, the burdens of the utility are unjustly increased and the public in no manner benefited. Every commission should have the power, and it should be its duty, to coördinate the corporate with the public needs, by preventing the issue of securities for unnecessary construction.

The purpose for which securities may be authorized, as set forth in the laws, fall into five general classes:

1. The acquisition of property.
2. The construction, completion, extension, or improvement of its facilities or properties.

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<sup>45</sup> Arizona, California, Illinois, Kansas, Massachusetts, Missouri, New Hampshire, New York, Ohio, Wisconsin.

<sup>46</sup> Arizona, California, Illinois. See Table II.

<sup>47</sup> P. U. R. 1915, B55, D160; 1916, C42.

<sup>48</sup> *Id.* 1916, A418.

3. The improvement of maintenance of its service.

4. The discharge or lawful refunding of its obligations.

5. The reimbursement of the treasury<sup>40</sup> for moneys actually expended from income, or from any other moneys in the treasury not secured by the issue of stocks or bonds.

The first group, the acquisition of property, includes the purchase of rights of way and of other necessary real estate, and the acquisition of the property or securities of related systems. The securities must represent a permanent addition to the facilities of the railroad or utility. The public service acts of ten states forbid the capitalization of the right to be a corporation, or the capitalization of any contract for consolidation or lease.<sup>41</sup> If issues were allowed for such purposes, they would rest upon anticipated earnings and not on present assets, always a doubtful proceeding, particularly unjustifiable in the case of railroads and public utilities.

The second group covers all the basic equipment that directly furthers the company's business, including the cost of welfare buildings, when not directed beyond suitable provision for the health and safety of employees.<sup>42</sup> What proportion, if any, of the securities authorized for construction costs should be credited to promotion fees has not been decided uniformly by the state commissions. In recognition of the value of the services of the promoter, Iowa passed a law in 1911 requiring the labor performed in effecting the promotion of steam and electric railways to be taken into account in fixing the amount of capital stock. The Maine commission authorized the issue of stock to the promoter of a railroad, although only preliminary organization work had been done.<sup>43</sup> The California commission authorized stock to the par of \$75,000 for promoter's services in projecting a railroad that could be financed at a sum not to exceed \$750,000.<sup>44</sup> These rulings partake of extremes in expressing appreciation of the work of the promoter, but are based on a correct principle, for the work of the promoter in the field of modern

<sup>40</sup> Arizona, California, Illinois, Indiana, Missouri, New York, Ohio, Wisconsin. The other four groups are mentioned in the laws of these states and of Georgia, Kansas, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Hampshire.

<sup>41</sup> Arizona, California, Illinois, Indiana, Maryland, Missouri, Nebraska, New York, Ohio, Wisconsin.

<sup>42</sup> P. U. R. 1915, B582.

<sup>43</sup> P. U. R. 1916, D260.

<sup>44</sup> Id. 1915, F311.

industry is co-important with the work of the engineer, and a condition precedent to the latter's employment. Less favorable consideration has been accorded the promoter in Arizona,<sup>54</sup> Massachusetts,<sup>55</sup> New Jersey<sup>56</sup> and Ohio. The Maryland commission has declared that the cost of financing through promotion agents is a proper operating expense.<sup>57</sup> There are few commissions that do not take this factor into account, although they may refuse an award under that name. All states permit of the issue of securities to meet engineering costs. The large engineering firms are taking a lead in the promotion field. Their work of organizing and financing the project is distinct from the work of actual construction, but a single fee may be received for the completed project, the promotion costs being absorbed in the engineering costs.

The third group, improvement or maintenance of service, places a heavy burden of interpretation upon the commissions, in determining what may properly be included under this classification. Working capital falls under this division. The Massachusetts Railroad Commission refused to authorize securities for this purpose. To meet the special need of street railways, a law was passed permitting the issue of stock to provide working capital, not to exceed 5 per cent of outstanding stock, or an issue of bonds to an amount determined by the commission.<sup>58</sup> In general, the commissions authorize securities to provide working capital, in an amount varying with the nature and extent of the business.<sup>59</sup> Operating expenses and replacements also belong in the third group. They may not be capitalized in the form of stocks in any part of the Union. It lies, however, within the discretion of several commissions to concur in the issue of bonds or notes for these purposes.<sup>60</sup> In every state, permission is withheld unless the corporation proves its ability and willingness to make

<sup>54</sup> P. U. R. 1915, B1043.

<sup>55</sup> *Id.* 1915, A15.

<sup>56</sup> *Id.* 1916, D77.

<sup>57</sup> *Id.* 1916, B925.

<sup>58</sup> Acts of 1909, C. 485.

<sup>59</sup> California, P. U. R. 1915, E834; Illinois, *id.* 1915, F235, 1916, C281, 704; Indiana, 1915, C561; Missouri, *id.* 1916, F49; Nebraska, *id.* 1915, B416, D160, 1917, A907; New Jersey, *id.* 1915, B601; New York, Public Service Commission Reports, Hearings and Decisions, I, 166.

<sup>60</sup> Arizona, California, Illinois, Missouri, New York, Ohio, Wisconsin; see Table II under "Purposes" for references. Massachusetts, Acts 1914, ch. 671 (street railways).



good out of earnings the amount, either by direct payments to a sinking fund, or by investments in capital assets.<sup>41</sup> The New York Second District Commission has well summarized the advantages accruing from permitting issues for operating expenses, declaring that:

this policy enables the companies to absorb early losses . . . . . to continue to serve the public without interruptions uniformly attendant upon receiverships . . . . . and makes them comparable to industrials and other unregulated fields for investment, so far as the possibilities attendant upon external development are concerned.<sup>42</sup>

Where the power to authorize issues for replacements and operating expenses is conservatively exercised, it may prove of public benefit in those cases where an insufficient depreciation fund has been carried, and an inefficient service will result from a continued use of obsolete or worn out equipment. The requirement of a restoration to the capital account of an equal amount reduces the measure to a purely temporary expedient. The railroads, as a whole, have no need of availing themselves of this privilege. The enforcement of present day stringent accountancy rules will soon obviate the need of any utility resorting to this method, by compelling the maintenance of adequate depreciation funds.

The fourth group, the discharge or lawful refunding of the company's obligations, presents no particular problem of interpretation.

The fifth group, reimbursement of the treasury for funds employed in the extension, improvement and betterment of the properties of the utility corporation or railroad receives unanimous approval by all commissions, when the securities are to be sold and the funds turned into the treasury.<sup>43</sup>

When such securities are in the form of stocks to be distributed in lieu of a cash dividend, there is a decided divergence of opinion as to the propriety of consenting to their issuance. The act creating a commission for the District of Columbia, and the laws of Massachusetts, New Hampshire and South Carolina forbid scrip dividends. The courts of South Carolina, however, have held that the capitalization of a new company formed to purchase the property of two exist-

<sup>41</sup> P. U. R. 1916, C769, D551; *id.* 1917, A889.

<sup>42</sup> New York, Public Service Commission, Second District Ninth Annual Report, v. I, p. 7.

<sup>43</sup> 94 Atl. 193.

ing companies at full value, though in excess of the capitalization of the existing companies is not in violation of this statute, even if the securities are to be taken by the stockholders of the old corporations.<sup>63</sup> According to this decision, the law may be circumvented without very great inconvenience and is practically nullified. Some commissions, as Ohio, favor the sale of such securities, in place of a direct issue to the stockholders, and the distribution of the funds as a cash dividend.<sup>64</sup>

Many state laws permit stock dividends in an amount represented by actual investment in the corporation of net earnings.<sup>65</sup> The commissions of California,<sup>66</sup> Illinois,<sup>67</sup> Indiana<sup>68</sup> and New Jersey<sup>69</sup> have rendered decisions to the same effect. The advantages of permitting stock dividends are several. Some surplus is essential to every corporation to provide for emergencies and to stabilize dividends. To keep this in the form of idle cash is an economic waste. To put it entirely into outside investments, which the management cannot control, is a risk, to lessen which unusually small returns must be accepted by investing in preferred securities. By the employment of the surplus in its own business, a corporation is enabled to make improvements when needed acting independent of conditions in the money market, and to do so without the payment of interest. The public is saved this interest charge, since the corporation may not exact interest on its own funds, but may only issue securities to the amount of the net property addition. With the present powers of investigation possessed by commissions, there is no danger in permitting the investment of a corporation's surplus in its own property, and the distribution of a stock dividend when the improvements are completed. This is particularly just when the owners have refrained from all dividends in order to build up the credit of the corporation.

The legitimate purposes as defined in the laws are sufficiently broad not to check the healthy expansion of public service corporations entirely intrastate, but the conflicting interpretations by the

<sup>63</sup> P. U. R. 1915, A483.

<sup>64</sup> Kansas, Maine, Missouri, Ohio, Wisconsin, West Virginia (*see* Table II).

<sup>65</sup> P. U. R. 1915, C324.

<sup>67</sup> *Id.* 1915, A205.

<sup>68</sup> *Id.* 1915, A540.

<sup>69</sup> *Id.* 1915, E72.

different state commissions retard the fullest development of interstate corporations.

Railroads and public utilities are limited not only as to the character of the securities and the purposes for which they may be issued, but also as to what may be received in *payment for securities*. Many states have constitutional provisions to the effect that stocks or bonds may not be issued except for an equivalent in money paid, labor done or property actually received and applied to the purposes for which the corporation was created; that all fictitious increase of stock or indebtedness is void; and that neither labor nor property may be received in payment at a greater value than the market price at the time such labor was done or property received.<sup>70</sup> The same provision is incorporated in the statutes of many states.<sup>71</sup> The purpose of such statutes is to restrict issues to actual investment, and they are therefore constitutional.<sup>72</sup>

The enforcement of these provisions is left entirely to the directors in several states, and their judgment may be reversed only in fraud proceedings.<sup>73</sup> If the issue is for other than money, Iowa requires the consent of the Executive Council of State, which, if necessary, may make an investigation and ascertain the real value of the property to be transferred.<sup>74</sup> In Vermont the issue of shares of stock for property is subject to special approval by the shareholders, to whom all particulars must be submitted.<sup>75</sup> Other states have made it the duty of their commissions to enforce the provisions as to the form of payment. In Virginia, if the securities are issued for property or services already received, the commission may investigate the value of the property. Texas requires special approval of the commission if bonds are to be issued in advance of the completion of a railroad. In Wisconsin, a railroad or utility is restricted in the issue of securities for services or property to the true money value, as determined by the commission, in an amount equal to the

<sup>70</sup> Alabama, sec. 234; Arizona XV, 4; Arkansas XII, 4; California XII, 11; Delaware IX, 3; Idaho XI, 9; Illinois XI, 13; Kentucky, sec. 193; Louisiana, sec. 266; Mississippi, sec. 196; Missouri XII, 8; Nebraska XI, 5; South Carolina IX, 10; South Dakota XVII, 8; Utah XII, 5; Virginia, sec. 167.

<sup>71</sup> See Table II under payment.

<sup>72</sup> P. U. R. 1915, A618 (Massachusetts).

<sup>73</sup> Delaware, Pennsylvania, South Dakota, West Virginia.

<sup>74</sup> Code 1913, sec. 1641b.

<sup>75</sup> Laws of 1910, 143, sec. 6.

face value of the stocks and not less than 75 per cent of the face value of the bonds.

The decisions of the commissions conflict as to the proper measure of the value of the property, whether actual cost, reproduction new, or present value. The Maryland commission refused to authorize the issuance of securities beyond the value of a public service company's property, although the company had actually expended in the plant a larger sum than it sought to capitalize.<sup>76</sup> In contrast, New Hampshire granted authority to issue securities to cover the actual cost of construction, although a valuation showed a present cost of reproduction new somewhat less than the actual cost.<sup>77</sup> The Texas law permits the purchasers of a railroad to issue securities to the full value of the property, irrespective of the purchase price. The California commission gave consent to a reorganization plan that involved the issue of securities beyond the value set by the company.<sup>78</sup> In Maine, a company was denied the right to capitalize more than the purchase price.<sup>79</sup> Extreme liberality was displayed by the Maine commission in another case, when it authorized the issue of bonds, although the company had no physical property.<sup>80</sup> Such inharmonious decisions introduce a measure of uncertainty that is particularly disturbing in the case of railroads that are national in scope, whatever the length of line in any one state.

These same principles apply to reorganizations and consolidations. Georgia and Wisconsin limit issues of securities in such cases to the fair value of the property. The California commission has not been strict in valuations for this purpose, in one case making no effort to eliminate undue expense in connection with the property.<sup>81</sup> Several states provide that the stock of consolidated corporations must not exceed the aggregate capital stock of the corporations consolidated at the par value and any additional sum paid in cash.<sup>82</sup> The total amount of securities that may be issued upon the re-

<sup>76</sup> P. U. R. 1915, A812.

<sup>77</sup> P. U. R. 1915, E931.

<sup>78</sup> *Id.* C807.

<sup>79</sup> *Id.* E109.

<sup>80</sup> *Id.* 1916, D260.

<sup>81</sup> *Id.* 1915, F569.

<sup>82</sup> District of Columbia, Illinois, Maryland, Missouri, Nebraska, New York, Ohio.

organization of a corporation is limited to the fair value of the property in Pennsylvania, as determined by the commission in Illinois, New York and Texas. Ohio permits an issue to the full value of the old securities. When the amount of securities is conditioned on the sum of the securities of the separate companies the new issues partake of all the evils of the old. If the par of such securities is more than the real value of the properties, the "water" is not eliminated. If the par represents less than the real value, the owners are penalized to the extent of the difference, when they should be rewarded for their thrift in increasing the assets of the corporation out of savings. The issue of securities to the fair value of the property, as determined by the commission, whether greater or less than the par of the old securities, is the most just method, and the only one really ensuring value received.

#### PAR VALUE AND SELLING PRICE

If the many state laws which limit securities to a reasonable amount for lawful purposes and require the corporation to receive value in full, were universally executed, no stock would sell for less than par and bonds would sell for their exact value, a condition only approximated in a few states.

The par itself, as prescribed in the statutes, is far from uniform. Some states leave the decision to the board of directors. In Tennessee, railroad stocks may be issued with a par of \$100 or less. In Colorado, the par may vary from \$1 to \$100, in Maryland and Pennsylvania it must be \$50, in the majority of states it is placed at \$100.<sup>2</sup> Railroad bonds may have a par of \$50 in Iowa, \$100 in Massachusetts and Vermont, \$500 in Nebraska, and \$1,000 in Wyoming. The maximum interest on bonds, which partly determines market price, is fixed at 6 per cent in Texas, 7 per cent in Arkansas, Massachusetts and Ohio, at 8 per cent in Iowa, and at 10 per cent in Michigan, Nebraska and Wyoming.

The par of the securities of many corporations has no relation to the value of the property, and consequently the selling price and the par value are rarely equivalent terms. The states which have not conferred on their commissions power to regulate securities give

<sup>2</sup> Arizona, Connecticut, Florida, Georgia, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Hampshire, Vermont, Virginia (See Table I, "Par").

the directors full power to set the price. Virginia also leaves the price to be determined by the directors. Some commissions have unlimited power to fix prices.<sup>84</sup> Ohio has agreed to a price as low as 80 for stocks, the policy of the California commission is not to allow a price less than 80-85 as a minimum,<sup>85</sup> and Illinois requires par to be received. The sale of stock at less than par is permitted in Indiana and Georgia if agreed to by the commission, which, except in such a case, does not have power to fix the price. Railroad stocks may not be sold for less than par in Maine. In the case of other utilities, the commission will not authorize the sale of a stock at less than par by a new corporation, but holds itself free to do so in the case of an existing corporation.<sup>86</sup> Other commissions require all stock to be paid in full.<sup>87</sup>

An exception to the requirement of all sales at par is made in New York in the case of convertible railroad bonds. The New York law authorizes the conversion of railroad bonds into stock at less than its par value, but not less than the market price at the time of the stockholders' consent to the bond issue.<sup>88</sup> In Maine, Massachusetts and New Hampshire railroad stocks must be sold neither for less than par nor less than the market price.<sup>89</sup> The same law holds for public utilities, except in Maine where the commission may permit the sale of such stock for less than par, but has refused to do so in the case of any new company.<sup>90</sup> In these states the stock must first be offered to the stockholders, and all shares not so disposed of must be offered at public auction under the same restrictions as to par and market price. With the exception of the New England states, it is not customary for the commission to set the price, if above par, but the rule is that the sale be made at the highest price obtainable, not less than par.

To require bonds to be sold at par is the exception. The Massachusetts commission discourages the sale at less than par. The Maine commission, however, holds that it is not its policy to refuse

<sup>84</sup> Arizona, California, Illinois, Ohio.

<sup>85</sup> P. U. R. 1916, C779.

<sup>86</sup> *Id.* 1915, C361.

<sup>87</sup> Michigan, Missouri, New Jersey, New York, Texas, Wisconsin.

<sup>88</sup> Railroad Law, sec. 8, sub. 10.

<sup>89</sup> See Table II under Selling Price.

<sup>90</sup> P. U. R. 1915, C361; also Maine, Public Utility Commission Report, v. II, p. 298.

to authorize issues of bonds for less than par.<sup>89</sup> The minimum price in Indiana and Wisconsin is 75 per cent of par.<sup>90</sup> Texas requires that full value be received for bonds, preventing a sale for less than par.<sup>91</sup> Some states permit the sale of bonds at the price determined by the board of directors.<sup>92</sup> Missouri has allowed bonds to be sold as low as 70, and Illinois for 73. New Jersey and Michigan favor a minimum of 80. The price of bonds is determined by such factors as the rate of interest, the life of the bond, the degree of security, the method of payment and any privileges, such as the right to convert into stock. The price is determined by the current rate for money for similar investments, and a uniform price is neither possible nor desirable.

The difference between the face value of the bonds and the selling price measures the cost to the corporation of obtaining money at a given rate of interest. The Iowa law is based on a false foundation, which authorizes the bond discount to be taken into account as an element of value in fixing the amount of capital stock that may be issued.<sup>93</sup> Bond discount is an expense, which the state commissions, in all valuation proceedings, require to be amortized out of income.<sup>94</sup>

#### SUMMARY AND CONCLUSION

The charges of incompleteness or inadequacy or both may be placed against many of the laws controlling the security issues of railroads. Where no special administrative body is entrusted with their enforcement, they remain inoperative, unless some noteworthy misapplication of power by the directors arouses public opinion. The pure publicity provisions in the public utility acts of Pennsylvania and Virginia are no improvement over all absence of commission control. Filing as a public document is not synonymous with making public. More complete information is more readily obtained from banker or stockbroker. The expenses of management of railroads and public service corporations are increased without any benefit to the public, the investor or the corporation.

<sup>89</sup> Delaware, Iowa, Louisiana, Nebraska, Utah and Wyoming, see Table II, first column.

<sup>90</sup> Code 1913, sec. 1641b.

<sup>91</sup> California P. U. R. 1915, E197; District of Columbia *id.* 1915, B546; Illinois *id.* 1915, A804; Massachusetts *id.* E370, Missouri *id.* 1916, E344; Ohio *id.* 1916, E370.



Slightly more justifiable are the statutes which require the commission to investigate the statements made in the application. The mandate resting on these commissions, however, either to accept or reject the application in the form submitted, has caused them to exercise extra-legal powers by imposing conditions. Such action is proof of the inadequacy of the law. It is the law as it stands, and not as enlarged by the dangerous practice of reading into it increased powers, that is to be criticised. Judged on its own merits this type of control is highly deficient, for it imposes more burdens than pure publicity, while the gains are only problematical, certainly not proportionately greater.

Some power should be granted the commission to modify the application, with due recognition that the danger from extremes is not less in granting too much than in granting too little discretion. So long as salaries are low, qualifications for public office less, and the power of appointment exercised to distribute political plums rather than to reward ability, it is inviting disaster to substitute unconditionally the judgment of public officials for that of persons of long special training. The value of commission control rests upon the ability of the commissioners to act as detached, impartial observers, checking but not replacing the decisions of corporate officials, whose judgment may be warped by too narrow attention to a single interest.

Present legislation is, as a whole, unsatisfactory, protecting neither the public nor the corporation and its investors. Despite its imperfection, this legislation has been in response to a rapidly growing realization that the physical plant of a railroad or public utility is not a gift out of the clouds; that regulation of rates and services is only partial regulation, necessitating the inclusion of securities to round out the circle.

Control of securities is necessary to protect the corporation against itself. In fact, "Chapters in Erie," the Chicago and Alton deal and similar abuses of corporate powers gave rise to the agitation for the control of securities. The recent financial troubles of the Rock Island, the Frisco and other railroads are modern evidences that the corporation might profit from a review of the directors' decisions by an impartial tribunal.

Protection of the investor is also of vital interest. Until recently his claims were disregarded. Existing investments could be

submitted to any number of burdens without the possibility of escape. The holder of free funds, however, notes all such tendencies and is quick to divert his money into more promising channels. With a dull market for railroad or other public utility offerings, the public fails to acquire needed facilities, and is thus impressed with the justness of the investors' claims.

The public itself is most directly benefited by security control. It is often asserted that securities have no bearing upon rates, and commissions declare that they do not take them into account. But a careful investigation of the proceedings of any commission will reveal instances in which the rate was based upon the condition of the corporation's securities. Always a return is insisted upon. "It is the setting in which the problem (of rates) is most frequently submitted for judicial consideration," the Interstate Commerce Commission has declared.<sup>24</sup> Aside from rates, every reorganization, the direct product of unwise security issues, upsets the business equilibrium of the entire country. Unwise security issues also react to the detriment of the public by poorer service, inadequate maintenance and depreciated equipment.

Present regulation does not solve the problem of proper security control, yet some regulation is expedient. The first step needed to clarify the situation is to distinguish between corporations that are interstate and those which are intrastate or local in character. Railroads and corporations controlling facilities essential to the efficient operation of the railroads are of chief interest in the first class, but whatever corporations are placed under the control of the Interstate Commerce Commission should be included. A railroad's securities are the *sine qua non* of its establishment and extension, are co-existent with each foot of its line, and cry out for uniform treatment, possible solely through national control. More detailed consideration of federal control is not required here, except to remark that the securities of interstate corporations should be placed under the sole and exclusive control of a central federal body, an adjunct of the Interstate Commerce Commission, and forming a part of a rational scheme of complete federal regulation.

Federal regulation of only interstate corporations leaves a very wide field to the states. Light, heat and water companies and street railways are a few of the corporations whose securities should

<sup>24</sup> Interstate Commerce Commission, 22d Annual Report, p. 86.

be regulated by state commissions. Appointment to such commissions should have some more efficient base than political prestige. Commission control should be positive, for there is no need to regulate the well managed corporation, and the fear of publicity will prove inadequate to prevent the unscrupulous from enriching themselves.

The bread pill stage of regulation must be put behind, whether the regulation is to be by state or federal commissions. Thorough investigation and valuation should be made before approval is granted. Restrictions should be placed upon the power of the commission as well as upon the corporation. It should be unlawful for the commission to authorize issues far in excess of the value of the property. There is no reason for the commission to decide the kind of security, except to prevent an unsafe proportion of debts to ownership shares. Supervisory power over prices is sufficient, although a minimum price for bonds and no par for stock might add efficiency to the legislation. The duty of the commission to follow up the disposition of the proceeds from the sale of securities is no less important than the approval itself. Finally, uniformity is desirable for all security legislation, since the investment market is national.

The beneficial results of the right kind of legislation are incalculable. No legislation causes a haphazard, mushroom growth. Irrational legislation destroys the fine network of confidence without which the inflow of funds will soon cease and development come to a standstill. Rational legislation instills confidence, so that the full complement of needed funds is secured quickly and cheaply.

## DESIRABLE SCOPE AND METHOD OF FEDERAL REGULATION OF RAILROAD SECURITIES

BY MAX THELEN

In preparing a paper on "Desirable Scope and Method of Federal Regulation of Railroad Securities," as I have been requested to do, it is necessary to make a number of assumptions. The writer of such a paper must assume for the purpose of the paper that railroads will remain in private ownership.

It may be assumed, furthermore, that it is not necessary in this paper to demonstrate the necessity for public regulation of railroad securities. Heretofore, it has at times been urged that railroad securities have nothing to do with the regulation of railroad rates, service or facilities and that, accordingly, there is no necessity for public regulation of their issue. It seems clear, however, that a railroad whose financial structure is unsound not merely has great difficulty in maintaining reasonable rates and adequate service but also finds it practically impossible to secure new funds for necessary additional capital expenditures. The predicament of the railroads which, even before the outbreak of the war, found themselves unable to secure the additional funds urgently needed for the enlargement of terminals, the construction of double tracks, the purchase of additional locomotives and freight cars and for other capital purposes was largely caused by excessive security issues or an unhealthy preponderance of funded indebtedness over capital stock. Our failure in the past to provide adequate regulation over the security issues and the financial structures of these railroads is largely responsible for their present condition. Our difficulty has been not too much but too little regulation.

The title of this paper presupposes that, to some extent at least, federal regulation of railroad securities is desirable or necessary but that the scope and method of such regulation are open to discussion. In the brief and sketchy manner made necessary by the limits of this paper I shall address myself herein specifically to the desirable scope and the desirable method of the regulation of railroad securities by the federal government.

The subject will be considered under the following heads:

1. Federal versus state control
2. Federal incorporation
3. Control versus publicity
4. Proposed statute

#### 1. FEDERAL VERSUS STATE CONTROL

Heretofore the federal government has made no provision for the regulation of the issue of railroad securities. In the absence of action by the federal government, twenty-one states have provided for such regulation by their respective railroad or public service commissions.<sup>1</sup>

In determining whether regulation in a given field of railroad activity should be exercised by the federal government or by the state governments, I have always been of the opinion that the federal government should do whatever the federal government can best do for our people and that the state governments should do whatever they can best do. The test is the good of our people as a whole and not whether a favor shall be extended to the federal government or to the state governments.

Applying this test to the railroad situation, I believe that the regulation of local service, facilities and police regulations can best be done by local authorities. The same conclusion follows, in my opinion, with reference to local rates, with the proviso that legislation should be enacted by the federal government providing for coöperation between the Interstate Commerce Commission and the affected state commissions in the so-called Shreveport situations involving alleged discrimination between interstate rates and intra-state rates.

However, applying the same test to the issue of railroad securities I have long since reached the conclusion that authority over the issue of securities of railroads engaged in interstate commerce should be exercised exclusively by the federal government. This conclusion is based not merely on an abstract study of the situation but also on an experience of five years as a member of a state railroad commission charged with the duty of regulating the issues of securi-

<sup>1</sup> For a detailed analysis of what the states have done in regulating railroad securities, see article in this volume: "State Regulation of the Securities of Railroads and Public Service Companies." [Error.]

ties of all classes of public utilities, including railroads engaged in interstate commerce.

The reasons for this conclusion may be stated very briefly. Referring first to capital stock, no state can control the issue of stock by a railroad company incorporated in another state. In order to escape regulation of the issue of its capital stock it is now only necessary for a railroad company to incorporate in some state which does not provide for regulation of the issue of the capital stock of railroad companies. The only way to meet this situation is to provide for regulation by the federal government. Referring now to bonds, efficient and economical financing requires that railroad obligations evidenced by bonds shall constitute a lien upon the property of the railroad, irrespective of state lines. As a practical matter, financing in pieces by state lines is not possible. To provide that application for authority to issue railroad bonds must be made to each state in which any portion of the property to be mortgaged is located is not merely dilatory and cumbersome but also leaves open the door to differences of opinion between the authorities of the various states, which differences may result in the defeat of the entire proposed issue. The only prompt and satisfactory control over the issue of railroad bonds is the establishment of exclusive control by the federal government in a single regulatory body.

A number of bills introduced in Congress during the last few years and providing for some measure of control by the federal government over railroad security issues have provided, in effect, that the control by the federal government shall be concurrent with continuing control by the respective state governments. The result of such legislation would be to add one more commission to those already exercising control, and thereby to introduce additional delays and increase the possibilities of differences of opinion between the various public regulatory authorities. Such legislation would complicate the situation and would seem to be inadvisable. The only satisfactory solution is exclusive jurisdiction in the federal government with reasonable opportunity to all affected state commissions to appear before the federal authority and to be heard in matters affecting their respective states.

Under the decisions of the Supreme Court of the United States construing federal statutes referring to hours of service, employers'

liability laws, safety appliances and other fields of railroad regulation, I have no doubt of the legal power of Congress to provide for exclusive regulation by the federal government of the security issues of all railroads to any extent engaged in interstate commerce. If the federal government enters this field and indicates its intention that its regulation therein shall be exclusive, the authority of the states to exercise jurisdiction in this field will be effectively excluded. In this respect I agree with the argument presented to the Committee on Interstate and Foreign Commerce of the House of Representatives in February and March, 1914 and to the Committee on Interstate Commerce of the United States Senate in June and July, 1916 by Mr. Alfred P. Thom, speaking as representative of railroads whose earnings constitute 84 per cent of all railroad earnings in the United States.

## 2. FEDERAL INCORPORATION

The suggestion has recently been made in certain quarters that federal regulation of railroad security issues cannot be made effective without federal incorporation of all the railroads. This suggestion is contrary to the generally accepted view. The conclusive answer to the suggestion is found in the argument of Mr. Thom before the Committee on Interstate and Foreign Commerce of the House of Representatives in 1914 and in the restatement of his legal conclusions made by him in December, 1916 before the Joint Committee of the Senate and House of Representatives.

The power of the federal government to create a federal railroad corporation rests on its authority to establish an agency or instrumentality to carry into effect the powers vested in the government.<sup>2</sup> The federal government cannot, by creating a federal railroad corporation, enlarge the powers possessed by the federal government. Whatever the government can do indirectly through the creation of a corporation as its agent it may do directly as principal without the establishment of the agency. Accordingly, the creation of a federal railroad corporation cannot possibly enlarge such powers as the federal government already possesses to regulate the security issues of railroads engaged in interstate commerce. The creation of federal railroad corporations for this purpose is entirely unnecessary.

<sup>2</sup> *McCullough v. Maryland*, 4 Wheat. 316.



As bearing on the regulation of railroad security issues by the federal government, it may be appropriate at this point to draw attention to the fact that under the plan of federal incorporation presented by the railroads to the Joint Congressional Committee it is provided that no railroad shall be permitted, after a certain day, to continue to engage in interstate commerce unless it has taken out a federal charter; that a federal railroad corporation is to take the place of each existing state railroad corporation; and that the federal railroad corporation shall, under this compulsory plan, have the same securities outstanding as are now outstanding against the state railroad corporation. In other words, by compulsion of the federal government, the existing railroad securities, including all the water therein and all the seeds of financial disease resulting from existing unhealthy railroad financial structures, are to be perpetuated in the new federal railroad corporations. That such legislation should be adopted by Congress seems inconceivable.

This paper will proceed on the assumption that federal incorporation of the railroads is entirely unnecessary to the adequate regulation by the federal government of the security issues of all railroads engaged in interstate commerce.

### 3. CONTROL VERSUS PUBLICITY

Considerable difference of opinion has heretofore existed on the question whether federal control over railroad security issues shall provide merely for publicity or whether it shall provide for affirmative action by the appropriate public authority before such securities may be issued. These two opposing theories are generally referred to as the "publicity" method and the "control" method.

The publicity method provides that before a railroad corporation may issue securities it must file with a designated public authority a statement of the proposed issue and of its financial condition. Having filed such statement the corporation may then issue the proposed securities without action by the public authority. The control method provides that before the railroad corporation may issue its securities it must first receive the approval of a designated public authority.

The publicity method was favored by the Federal Securities Commission, of which President Hadley of Yale University was chairman, and has been advocated by a number of prominent men

in public life, including two former members of the Railroad Commission of Wisconsin. Of all the states of the Union which have provided for control over the issues of railroad securities, Virginia alone has adopted the publicity method. All the other twenty states which have provided for such regulation have adopted the control method. The chief argument advanced by those who favor the publicity method seems to be that under the control method the public authority is either legally or morally bound to authorize rates sufficiently high to yield a return on the security issues authorized by it as well as on all the preceding security issues. As far as the legal question is concerned, I have seen no authority to support the proposition. To remove any doubt on this question, the federal statute could readily provide that nothing therein contained should be construed to imply any guaranty or obligation on the part of the United States with reference to the securities authorized.

Referring to the assumed moral obligation, it seems obvious that in so far as past issues of securities are concerned, made without governmental action, no such assumed obligation can possibly exist. In so far as issues hereafter authorized by the federal government are concerned, it has never been successfully contended that a governmental authority which authorizes such security issues even morally underwrites the success of the corporation. Due weight will, of course, be given to the investment made by the corporation and to the securities from which the funds thus invested are derived. This statement, however, by no means implies that the corporation is relieved from the ordinary chances which every business takes and that the government either legally or morally guarantees the success of the venture or the integrity, under all conditions, of the security issues authorized by it. In California, where the State Commission acts under the "control method," I have never heard the suggestion made that the state is in the position of a guarantor of the security issues authorized by it. I am also advised that in most of the other states which also have the control method no such suggestion has ever been made.

The chief argument in favor of the control method is that the ability of the utility to render adequate service at reasonable rates and to fulfil the requirements of the public for additions, betterments and extensions depends very largely on the soundness and integrity of its financial structure, and that the construction and

maintenance of healthy financial structures for the protection both of the utility and of its patrons imperatively require the affirmative control over security issues which has now been established in most of the leading states of the Union. In my opinion, control over the issue of securities and the disposition of their proceeds is the keystone of the entire arch of public utility regulation. Regulation which merely provides that the utilities shall file a public record of what they intend to do in connection with security issues would not have prevented the wreck of the Chicago and Alton, the New York, New Haven and Hartford, the Frisco or the Rock Island. I consider such regulation to be entirely ineffective and hence worse than no regulation. In my opinion, based on the experience in California and other states of the Union which have undertaken the regulation of the security issues of public utilities, the only effective method of regulation is the control method.

#### 4. PROPOSED STATUTE

I shall now make a number of suggestions with reference to provisions to be contained in a federal statute establishing control of the security issues of railroads engaged in interstate commerce.

In my opinion the control over security issues of such railroads should be vested in the same federal body which regulates, to the extent to which such regulation has been provided, their rates, service and safety and which ascertains the various facts entering into the value of railroad properties. This conclusion not merely seems logical, but also is in accordance with the practice of all the states which have provided for regulation of railroad security issues. In making this suggestion, however, I wish to draw attention to the fact that no branch of public utility regulation requires more prompt action than requests for authority to issue securities, and to suggest that if this authority is vested in the Interstate Commerce Commission, adequate machinery must be provided so that the authority may be promptly exercised.

The statute, in my opinion, should apply to all railroads which are engaged in interstate commerce but should not, for the present, include street railways.

The statute should apply to holding companies as well as to operating companies. I am not in sympathy with the suggestion that the regulation should not apply to railroads which are located

entirely within the limits of a single state. If such railroads are engaged in interstate commerce, as most of them are, they should be just as much subject to regulation of their security issues by the federal government as the railroads whose situation differs only in the fact that they happen to cross a state boundary line. The test, in my judgment, should be whether the railroad is to any extent engaged in interstate commerce and not whether its tracks and ties happen to be located entirely within the boundaries of a single state.

The statute should state the purposes for which railroad securities may be issued. These purposes are generally defined in the state statutes to be the acquisition of property; the construction, completion, extension or improvement of facilities; the improvement or maintenance of service; the discharge or lawful refunding of obligations; and the reimbursement of moneys expended from earnings or from other moneys in the treasury of the utility not secured from the issue of stocks, bonds or other evidences of indebtedness, for any of the aforesaid purposes.

The statute should provide that no railroad corporation subject thereto should have authority to issue any stocks or stock certificates or any bonds, notes running longer than a specified term, or other evidences of indebtedness unless a petition asking authority to make the issue has first been filed with the Interstate Commerce Commission and the Commission has made its order thereon specifying the issue which is authorized, and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof may be applied.

I consider it unwise to have the statute specify in detail the contents of the petition. It would be far more desirable, in my opinion, to have the statute provide that applications should be made in such form as the Interstate Commerce Commission may from time to time determine and prescribe and that the Commission should have the power to establish rules and regulations governing the contents of the petition and the procedure in connection therewith. The experience of the states shows the wisdom of a statute unencumbered by unnecessary detail and providing flexible regulation within the definite principles established by the statute.

The statute should provide that notice should be given to the railroad commission or public service commission or public utilities

commission or other appropriate authority of each state in which the petitioner operates, with the right on the part of such states to appear before the Interstate Commerce Commission and to be heard upon the application. The Interstate Commerce Commission should be authorized to give such additional notice as in its judgment is necessary and to hold such hearings as it considers advisable.

The statute should provide that the Commission may by its order grant permission for the issue of securities in the amount applied for, or in a lesser amount, or not at all, and that the Commission should have the right to attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary. The power of the Commission to impose conditions in its order is a matter of very great importance and should not be overlooked in the framing of the statute.

The Interstate Commerce Commission should be authorized to require the railroad companies, in such form and detail as the Commission may consider advisable, to account for the disposition of the proceeds of securities authorized and to establish rules and regulations to insure the disposition of the proceeds for the purpose or purposes specified in the original order or in such amended or supplemental orders as the Commission may from time to time make.

The statute should provide that the Commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit in excess of the amount (exclusive of any tax or annual charge) actually paid to any public authority as the consideration for the grant of the franchise, permit or right. Franchises are granted by public authorities to enable private capital, as agent for the public, to exercise functions which the public itself might directly perform. To have private capital ask public authorities to grant franchises so that such capital may perform important functions as agents of the public and then to have the grantees of such franchises turn around on the public and claim against the public values for the franchises thus conferred is the height of absurdity and injustice. When the federal government undertakes to control the issue of railroad securities it should be careful to insert in the statute appropriate language so as to prevent the capitalization of any such franchises, permits or privileges except to the extent of actual payment made therefor by the grantee of the franchise, permit or privi-

lege to the public authority granting the same. An ounce of prevention is worth a pound of cure.

In order to set at rest definitely the claim that any governmental guaranty, either legal or moral, will follow from authorizations to issue securities, it may be well, although unnecessary, to insert in the statute a clause providing substantially that nothing therein contained shall be construed to imply any guaranty or obligation on the part of the United States.

The statute should provide appropriate penalties for its violation. In my opinion, it is not sufficient to provide that violations or proposed violations may be enjoined and that persons guilty thereof may be fined or imprisoned. I suggest the additional provision found in the California Public Utilities Act, to the effect that any security issued without an order of the commission authorizing the same then in effect shall be void, but that failure in any other respect to comply with the conditions of the order shall not render such security void except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice.

Closely akin to control over security issues is control over the sales, leases, mortgages, encumbrances, mergers and consolidations of public utility properties. I suggest that the federal statute should provide that no railroad corporation subject thereto should thenceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its property necessary or useful in the performance of its duties to the public or any franchise or permit or right thereunder, nor by any means whatsoever, direct or indirect, merge or consolidate its property with any other common carrier subject to the Interstate Commerce Act without having first secured from the Interstate Commerce Commission an order authorizing it so to do.

There is nothing unusual or particularly difficult in connection with the exercise of the powers herein suggested to be conferred upon the Interstate Commerce Commission. Such powers are now exercised in the leading states of the Union with reference to railroads and, to a considerable extent, other classes of public utilities. The principles applicable to such control, the proceedings before the commissions, the forms of the orders, the method of reporting the security issues by the utility and the disposition of the proceeds

of such issues and every other factor connected with the problem have been worked out in detail by the various state commissions.

That the exercise of these powers by these states has had a salutary effect in protecting both the public utilities and their consumers and in improving the sale of public utility securities is generally conceded. That necessary public utility development continues unaffected by such regulation is shown by the fact that in California in excess of two hundred and thirty million dollars of new money has been invested in public utility enterprises since March 23, 1912, the effective date of the Public Utilities Act, being the largest amount of such investment in any corresponding period of the state's history.

By reason of the peculiar facts surrounding railroads engaged in interstate commerce, the control of their security issues by the states has not been as prompt, satisfactory and effective as the railroads, their patrons and their investors have the right to expect. For that reason the ineffective control over railroad security issues now established in a portion of the states of the Union should give way to prompt, effective and unified control by the federal government.



## THE POINT NOW REACHED IN THE FEDERAL REGULATION OF INTRASTATE RATES

BY J. A. LITTLE

### FEDERAL AUTHORITY OVER INTRASTATE COMMERCE BEFORE THE SHREVEPORT CASES

The principal motive which actuated the sovereign states in sending delegates to the convention which framed the Constitution of the United States is not mentioned in the Preamble to that instrument but is found in Article 1, Section 8, which delegates to Congress, among other things, the power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes."

The history of the period following the treaty of peace with Great Britain and prior to the ratification of the Constitution amply bears out this statement. To find a remedy for the conflict between the states which threatened to destroy the weak offensive and defensive alliance of the original thirteen states which was embodied in the Articles of Confederation, Rhode Island presented resolutions calling for a central body to regulate commerce; James Monroe, as a member of the federal Congress, brought in resolutions saying that such regulation was absolutely essential; and James Madison introduced in the legislature of Virginia and had passed resolutions similar to those adopted by Rhode Island with additional provisions calling for a convention at Annapolis to establish a better system of commercial regulations.

Six states sent representatives to the Annapolis Convention of 1786 and they, after extended discussion, came to the conclusion that no remedy for the evils complained of could be prescribed without drastic changes in the powers of the central government which would require the framing of a new constitution. In accordance with this conclusion the delegates to the Annapolis Convention issued the call for a constitutional convention.

Attention is called to these facts as an aid in placing a proper construction upon the commerce clause of the Constitution and in

defining the spheres of action within which the federal and state governments may properly operate.

It does not seem possible that there could have been any doubt in the minds of those who acted for the several states in ratifying the Constitution as to the *exact* power conferred on the federal government in connection with the regulation of interstate commerce since the granting of this power to the federal government was the most important single purpose of the framers of that instrument.

In the debate between those who favored and those who opposed a strong central government and the Constitution of the United States, which provides such a government to do for all the states what they cannot do so well for themselves but retains for the several states the functions which can best be performed by state governments, this question was discussed.

The supporters of the federal plan argued that the commerce clause of the Constitution permitted the new government to control interstate commerce only and that the states were left free to exercise all the governmental powers which had not been specifically delegated.<sup>1</sup> To ensure this construction of the Constitution some of the states insisted upon the passage of the first ten amendments which were primarily designed to preserve the rights of individuals and the several states against any encroachment on the part of the federal government.

It may therefore be said that there was no intent to deprive the several states of power to regulate their internal commerce by any construction placed upon the commerce clause but on the other hand such power was clearly and specifically reserved to the states by the Tenth Amendment.

This division of authority was recognized by the supreme court of the United States in deciding the first case arising under the commerce clause<sup>2</sup> in which a state enactment was set aside *because it directly regulated and impeded interstate commerce and was hence beyond the power of the state* and not because of any lack of power on the part of the state to regulate its internal commerce, such powers being discussed and upheld in the decision of the court.

The case just referred to is typical of many, other than rate cases, in which the Supreme Court of the United States has uni-

<sup>1</sup> *The Federalist*, 32, 82.

<sup>2</sup> *Gibbons v. Ogden*, 9 Wheat 1.

formly held that a state cannot lawfully enact regulations of its commerce which operate to burden unduly or impede interstate commerce. In such cases involving navigation laws, safety appliance acts, taxation of interstate commerce and related subjects there has been a conflict between a statute of the state and a valid act of Congress or, an attempted exercise, by the state, of the power granted to Congress by the commerce clause.

As to cases involving the validity of state legislation fixing maximum rates for transportation by railroad, or the lawful orders of state railroad commissions, it may be said that there has been practically no conflict with the power of the federal government under the commerce clause.

It is true that there have been many cases in which it was alleged that the states had interfered with or unduly burdened interstate commerce but a careful examination of all such cases from *Munn v. Illinois* (94 U. S. 113) down to the Minnesota Rate Case (230 U. S. 352) shows that the contentions advanced as to such alleged interference with interstate commerce were mere incidents to the efforts of the railroads to escape regulation by public authority.

It is a significant fact and a fortunate circumstance for the cause of public regulation of carriers and utilities that the Supreme Court has steadfastly refused to condemn state regulation on such alleged grounds.

State regulation of railroads was first attempted about 1873 responsive to widespread complaint as to the arbitrarily unjust, unreasonable and discriminatory charges imposed upon the internal commerce of the various states by common carriers.

It is a striking commentary on the wisdom of our *federal plan* of government to note the quick responsiveness of the state governments to the popular demand for relief from oppression by common carriers as compared with the course of congressional action looking toward relief for interstate commerce from similar evils.

In 1874 the Windom Committee reported as to transportation routes to the seaboard but no action was taken by Congress. When the Cullom Committee reported and the Act to Regulate Commerce was enacted in 1887, many states had already provided railroad commissions with full rate-making powers. *Congress did not give the Interstate Commerce Commission power to fix maximum rates until 1906.*

During the period between the enactment of the first granger laws and the passage of the Hepburn Act in 1906 the states had litigated practically every important question bearing upon the delegation of rate-making power to an administrative tribunal and the practical enforcement of such legislation.

At this point it seems proper to note that during the period of state regulation of rates prior to the passage of the Hepburn Act there was no complaint disclosed by any of the hearings of Congressional committees that the action of state railroad commissions was productive of restraint upon interstate commerce or of discriminations against such commerce.

On the other hand in the hearings of the Senate Committee on Interstate Commerce whose report preceded the passage of the Hepburn Act, we do find the statement that because of the regulation of rates by state commissions shipments moving within the confines of a single state were transported at reasonable rates and that "because of the fact that the defendants are unrestrained as to such interstate rates, and by reason of the combination of such defendants whereby competition is eliminated, that such interstate rates are abnormally high."<sup>3</sup> Such "*burdens*" upon and "*interference*" with interstate commerce clearly existed because of the failure of Congress to provide adequate remedies and not because of the proper exercise of the states' power of regulation.

As to the discriminations existing which might become the subject of complaint before the Interstate Commerce Commission it seems proper to take the testimony of a representative of the carriers who is described in the record as "possessing unusual legal attainments" and being "an expert on the subject of transportation" which is as follows:

As a matter of fact, all the really important controversies between competing localities (which will furnish by all odds the most important and difficult rate-making propositions) grow almost without exception out of interstate rate adjustments with which state commissions have nothing to do.<sup>4</sup>

It is a remarkable fact that all of the complaint against state regulation of rates has arisen since Congress gave the Interstate

<sup>3</sup> P. 69 Sen. Doc. 243, 59th Cong.

<sup>4</sup> P. 240, Sen. Doc. 243, 59th Cong. Statement of Hon. Walker S. Hines. *Italics mine.*

Commerce Commission power to *free interstate commerce from the evils referred to above.*

The Interstate Commerce Commission originally refused to take jurisdiction over cases involving alleged discriminations between state and interstate rates arising out of the acts of state railroad commissions or the enactments of state legislatures.<sup>4</sup>

#### THE SHREVEPORT DECISIONS

On further consideration of this subject in connection with the complaint of the Railroad Commission of Louisiana against the St. L. S. W. Ry. C. *et al.* (23 I. C. C. 31) the Interstate Commerce Commission held that it had full jurisdiction to hear such complaint and provide a remedy.

The order of the Commission in this case held that the class rates maintained by the defendant carriers were unjust and unreasonable and a reasonable maximum schedule was fixed for application from Shreveport, Louisiana, to *specified destinations* in Texas and the carriers were required to "abstain from exacting any higher rates for the transportation of any article" from Shreveport to Dallas, Texas and points intermediate *via* the line of the Texas and Pacific and from Shreveport to Houston, Texas and points intermediate *via* the lines of the Houston, east and west Texas and the Houston and Shreveport, "than are contemporaneously exacted for the transportation of such articles from Dallas or Houston for an equal distance toward said Shreveport." The power of the Interstate Commerce Commission to make this order was sustained by the Supreme Court of the United States in *Houston and Texas Ry. v. United States* (234 U. S. 342).

Accepting the construction placed upon the Act to Regulate Commerce by the Court as correct for the time being let us note what followed this decision.

The complaint of the Railroad Commission of Louisiana was broadened to include every carrier operating in the state of Texas and every commodity for which rates were fixed by the Railroad Commission of Texas and every article of commerce described in the western classification.

In deciding the enlarged case 41 I. C. C. 83 the Interstate Commerce Commission fixed "reasonable" rates to cover traffic

<sup>4</sup> *Saunders and Co. v. Southern Express*, 18 I. C. C. 415.

moving under class rates and certain specified commodity rates from Shreveport, Louisiana, to all points in Texas and also required the establishment of the "current western classification in effect at the time such traffic moves" to govern all shipments within the state of Texas.

There are several important differences between this and the earlier order which was upheld by the Supreme Court of the United States. The earlier order dealt with retail and the later order condemned wholesale discriminations in rates. I do not wish to imply that mere number is important, but the first order was limited to specific movements of traffic in state and interstate commerce while the last order covered any shipment whether state or interstate which came within range of its terms.

In the earlier case every rate fixed by the Commission was declared to be the "reasonable maximum" for application to interstate commerce and state rates were forced to conform to that standard of "reasonableness" to remove the unjust discrimination found. In the last case the Interstate Commerce Commission fixed reasonable rates to apply to class and commodity rates and dealt with classification in the following language:

Unquestionably the situation between Shreveport and its Texas competitors is such that unless the same classification applies unjust discrimination results. The western classification governs interstate transportation in the territory surrounding Shreveport, including transportation between Texas points and points in other states. *In large part it has received the indorsement of this Commission. Western Classification Case (25 I. C. C. 442).* Considering the findings already made, that transportation conditions for the competitive hauls here involved are substantially similar, *justice demands that the same classification shall apply to all.* . . . . We are therefore constrained to find that for the future defendants must establish and apply to transportation of property between points in Texas the provisions of the western classification in effect at the time such transportation takes place.<sup>6</sup>

Assuming that this order is valid as to its requirements governing classification it will be noted that:

1. The shipper at Shreveport may complain to the Interstate Commerce Commission against any rate, rule or regulation contained in the classification since the order of the Commission *does not make such rates, rules and regulations the reasonable maxima to apply to the interstate commerce of Shreveport.*

<sup>6</sup> Italics mine.

2. No shipper of freight between points in Texas can complain to either the State Railroad Commission of Texas or the Interstate Commerce Commission against any rate rule or regulation in western classification because the Texas Commission may not establish any different rate, rule or regulation since such action would come in "conflict" with the power of Congress under the commerce clause by reason of the resulting "burden" to and "interference" with interstate commerce while the Interstate Commerce Commission cannot act because it has never been given the power to fix reasonable rates governing intrastate transportation.

Under such circumstances the Texas shipper would find himself as much without a remedy for his complaint as was the fish dealer in Pensacola, Florida, who complained of the alleged discrimination resulting from the fixing of express rates from Mobile to Alabama points and who was denied relief by the Interstate Commerce Commission because of its lack of jurisdiction in *Saunders & Co. v. Sou. Express* (18 I. C. C. 415) with this important difference: the Texas shipper cannot even test the reasonableness of the classification, while *Saunders & Co.* were heard as to the question of reasonableness *per se*.

Under such circumstances it seems proper to inquire as to the extent of the "indorsement" which the western classification was given in the report of the Commission in the Western Classification Case (25 I. C. C. 422). In this case it became the duty of the Interstate Commerce Commission to determine the propriety of changes in the western classification which affected 1,263 descriptions of articles in the classification out of a total of 6,046 descriptions or approximately 21 per cent of the descriptions in the tariff. Since each description usually covers the carload and less-than-carload ratings and may carry such ratings for different kinds of packages it is safe to say that the classification covers 12,000 to 18,000 ratings. The commission estimated the total change in ratings to be not over 2,000; hence from 12 to 17 per cent of the total ratings were passed upon by the Commission, and many were rejected.

Can it be possible that the sovereign states have been so effectually shorn of their power to regulate rates that they may not change a tariff issued by an agent of the carriers which has been "In large part . . . endorsed by this (the Interstate Commerce) commission." Surely this cannot be the law either within the deci-



sion of the Supreme Court of the United States or the terms of the Act to Regulate Commerce, to say nothing of the Constitution of the United States.

In deciding the Minnesota Rate Case *supra* the Supreme Court of the United States laid down a very high standard of proof to be met as to earnings, expenses and valuation of carriers seeking to set aside a state rate or schedule of rates because of alleged confiscation. In general it may be said that such allegations must be sustained by clear and convincing proof.

#### MISSOURI RIVER NEBRASKA RATE CASES

If the Interstate Commerce Commission is right in its determination that the circumstances and conditions surrounding Texas intrastate traffic are similar to those surrounding the traffic between Shreveport and Texas points, it must follow that the rates found reasonable as to Shreveport are reasonable as applied to Texas intrastate traffic, and the rates established by Texas authorities, lower than such Shreveport rates, are simply less than reasonable. Can it be possible that the state should be deprived of its authority to make rates by the judgment of the Interstate Commerce Commission that rates are less than reasonable where the proof is of a less formal or complete character than would be required to establish a charge of confiscation in a court of law? This question has been answered in the Missouri River Nebraska cases at page 254, as follows:

The Nebraska commission does not question the duty of this Commission to direct the removal of unjust discriminations caused by differences between interstate and intrastate rates. It recognizes our authority under the decision of the Supreme Court in *Houston & Texas Ry. v. United States*, 234 U. S. 342, to direct the removal of such discriminations although state rates are increased thereby. It insists, however, that this authority may not be exercised unless the Commission finds, and is justified by the evidence in finding, that the intrastate rates are confiscatory. This position involves the assumption that a state-made rate or system of rates cannot be said to cause unjust discrimination unless it is unlawful for another reason, namely, that it is so low as to deprive the carriers of their property without due process of law or to deny them the equal protection of the laws. Such an assumption finds no support in those sections of the act which define unjust discrimination and undue prejudice, nor can it be justified in practice or on principle. This Commission is frequently called upon to determine whether a relation of rates is unjustly discriminatory where no question is or can be raised as to whether any of the rates involved are confiscatory. The act gives it no authority to determine whether state-made rates are confiscatory.

The position is wholly indefensible that this Commission must inquire into an issue as to which it has no jurisdiction for the purpose of determining a question as to which its jurisdiction is not only complete, but exclusive.

Except for this contention of the Nebraska Railroad Commission and the views of the Interstate Commerce Commission expressed in disposing of this phase of the case there is little difference between this proceeding and the Shreveport Cases. Whenever the conflict between federal and state regulation of rates is discussed the Shreveport and Missouri River Cases will be the main topics but there have been many other decided cases involving similar situations.

#### CLASSIFICATION OF PERTINENT DECISIONS

In general it may be said that there are four types of cases which have been presented to the Interstate Commerce Commission relating to "discriminations against interstate commerce" arising by comparison of interstate with intrastate rates which may be classified as follows:

1. Discriminations against the interstate commerce of a particular locality arising in connection with the intrastate commerce of certain localities in another state as to commerce with specifically named destinations in the same state.

2. Discriminations against the interstate commerce of certain localities which result from the intrastate rates applied between certain other localities in another state and the communities in whole sections of the same state which are not specifically named.

3. Discriminations which are alleged by certain communities to exist because of the difference between interstate rates to localities in another state as compared with intrastate rates between all points in that state.

4. Discriminations claimed to exist by certain shippers or localities because of the different rates maintained from such localities to various interstate destinations as compared with the varying intrastate rates existing in the several states embraced in the complaint.

The three Shreveport decisions fall within the first, second and third classes in the order named. The Cement Investigation (I. C. C. Docket 8182) is typical of the fourth class of cases. In this case the Interstate Commerce Commission has undertaken an investi-

gation; on its own motion and by consolidation of cases involving complaints filed, and investigations of rate advance cases affecting the cement rates applying between points in Western Trunk Line Territory and between such W. T. L. Territory and adjacent territories.

In the hearings of this case, the state rates and carload minima applying on cement moving within the states of Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Colorado were involved. In a similar case, the Livestock Investigation (I. C. C. Docket No. 8436), the scope of the proceeding will cover questions involving both state and interstate rates applying between all parts of the United States.

#### **SOUTH DAKOTA EXPRESS RATE AND ILLINOIS TWO-CENT FARE DECISIONS**

Since its decision in the Shreveport case (234 U. S. 342) the Supreme Court has passed on two other important cases involving similar issues.

In *American Express Co. v. Caldwell* (decided June 11, 1917) the order of the Interstate Commerce Commission in *Sioux City Commercial Club v. American Express Co.* was reviewed and the court held that the express companies were not required to adjust all rates from Sioux Falls and the other South Dakota points named to all other points in the State of South Dakota since the report and order of the Interstate Commerce Commission showed that unjust discrimination existed only in territory commercially tributary to both Sioux City and such Dakota cities. In this connection the Court said:

Where a proceeding to remove unjust discrimination presents solely the question whether the carrier has improperly exercised its authority to initiate rates, the Commission may legally order, in general terms, the removal of the discrimination shown, leaving upon the carrier the burden of determining also the points to and from which rates must be changed, in order to effect a removal of the discrimination. But where, as here, there is a conflict between the federal and the state authorities, the Commission's order cannot serve as a justification for disregarding a regulation or order issued under state authority, unless, and except so far as, it is definite as to the point or points to which it applies. For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic.

In a very recent case<sup>7</sup> this rule was amplified and extended. The carriers sought to increase all passenger fares from the state rate of 2 cents applicable in Illinois to the interstate rate of 2.4 cents per mile approved by the Interstate Commerce Commission for carriage between points in Illinois and adjacent states. The carriers claimed that such action was necessary to comply with an order of the Interstate Commerce Commission (41 I. C. C. 13). The Public Service Commission of Illinois contended that the order of the Commission was in excess of any power that had been or can be conferred on the Interstate Commerce Commission, but, assuming the existence of power to make the order, that the extent to which it was intended to affect the state-made rates was so indefinite as to render the order void and ineffective.

In determining these questions the Court approved its decision in the Shreveport Case as to the powers of the Interstate Commerce Commission, under section 3 of the Act to Regulate Commerce but held that the order which was in controversy was inoperative and of no effect because of its uncertainty.

What is quoted above from the South Dakota Express Case was restated and approved after which the Court said:

*In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested.<sup>8</sup>* This being true of an Act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty.

#### INTENTION OF CONGRESS AND FUTURE ADJUSTMENTS

Careful study of the reports of congressional committees as to the evils for which Congress sought a remedy by the enactment of the Act to Regulate Commerce convinces me that there was no intention on the part of Congress to delegate to the Interstate Commerce Commission the power to set aside state legislation or the lawful acts of the administrative tribunals established by the several states.

<sup>7</sup> The Illinois Passenger Fare Cases decided January 14, 1918.

<sup>8</sup> Italics mine. *Reid v. Colorado*, 187 U. S. 137; *Savage v. Jones*, 225 U. S. 501; *Cummings v. Chicago*, 188 U. S. 410; *M. K. & T. Ry. v. Harris*, 234 U. S. 412.

In order to establish the jurisdiction of the Interstate Commerce Commission in the Shreveport Case under the rule of construction stated above, the Commission and the Court were compelled to say in effect that the proviso<sup>9</sup> in section 1 of the Act to Regulate Commerce is merely a general *disavowal of any intention to regulate the rates* to be charged for transportation between points in the same state but Congress nevertheless *did intend to regulate partially* such rates in so far as they may be held to produce unjust discrimination against interstate commerce which is forbidden by section 3 of this Act. It seems fair to say that this construction of the act is so strained as to amount to judicial legislation aimed at an evil not comprehended by Congress when the Act was passed.

It seems well to recognize these facts although no substantial purpose can be served by dwelling upon them as an issue of present moment.

By reason of the decisions in the Express and Passenger Rate Cases, the exercise of the powers and duties of the Interstate Commerce Commission in Shreveport cases will be simplified and facilitated. Under these rules some phases of the final Shreveport decision will have to be better supported by evidence or the decision must fall if attacked in the courts.

This better definition of the principles governing such cases will go far to eliminate friction between the state and federal governments which has been increasing since the Shreveport decisions.

I believe that complete harmony in the regulation of inconsistent state and interstate rates in Shreveport cases can be accomplished by proper legislation which will permit *joint hearing and determination of such causes by the representatives of the state and federal government operating under uniform well defined legislative rules properly designed to govern such proceedings.*

Something along this line has been recommended by the Interstate Commerce Commission and it is to be hoped that this vexing question will soon be satisfactorily settled by such appropriate legislation.

<sup>9</sup> "Provided, however, that the provisions of this Act (to Regulate Commerce) shall not apply to the transportation of passengers or property . . . wholly within one state and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

## NECESSITY FOR EXCLUSIVE FEDERAL CONTROL OVER STATE AND INTERSTATE RATES

By EDGAR J. RICH

On the 28th day of December, 1917, the President took over the railroads of the United States and assumed control of all their functions, including the regulation of rates. The railroads are now being operated as a national system, and the state commissions are retained merely in an advisory capacity, to perform local functions to such an extent as the Director General may determine. At hearings held before committees of Congress during the month of January, 1918, representatives of the President urged that no legislation be enacted which should in any degree hamper the operation of these railroads as a national transportation system; that control over revenue was essential in order to maintain the efficiency of service. The war has thus emphasized the essentially national character of railroad transportation. The highest efficiency is necessary for a successful mobilization of the national resources of the country, and to that end the supreme control over transportation has been placed in the hands of one supreme authority. State lines have been eliminated in transportation to the same extent that they have been eliminated in every other line of the war's activities. War is exclusively the nation's business, and all the engines of warfare, of which the railroads are the greatest, must be under the exclusive power of the Commander-in-Chief.

To what extent do the same principles of exclusive control apply in times of peace? We must begin now to perfect a system of regulation which shall best be adapted to the nation's needs when these railroad systems are turned back to their owners after the war has ended. It is inconceivable that an instrumentality whose essentially national character has been demonstrated during the stress of a titanic conflict should again become subject, to the same extent as heretofore, to the conflicting and selfish control of local political authorities. But as the problem is after all essentially a peace problem, its solution must be attempted with reference to the normal conditions of commercial intercourse in times of peace. The aspect

of the problem to which this article is directed is whether the federal government should regulate all railroad rates both state and interstate.

#### LOCAL CONTROL OVER LOCAL AFFAIRS IS ESSENTIAL

It is clear that Congress cannot exercise power over intrastate transportation unless, in order to set interstate commerce free, it is necessary to assume such power. The constitutionality of its exercise depends upon whether such sweeping authority is necessary in order to prevent interruption to interstate commerce.

Congress cannot regulate commerce which is strictly local and which has no effect upon commerce between the states under the guise of the exercise of its plenary power over interstate commerce. The mere fact that the great preponderance of railroad traffic crosses state lines is no justification for the assumption of control over the relatively small amount of traffic which moves between points within the state, unless there is some interference with interstate traffic by reason of the exercise of state authority over this state traffic. It may be illogical and embarrassing for railroads to submit to the vexatious regulations of many jurisdictions; it may be contrary to sound principles of organization to be compelled to take their affairs before several tribunals when one tribunal could fully exercise all the authority necessary to protect the public interests. But our form of government is not based upon the theory of efficiency; it is based upon the theory of democracy, and local control over purely local matters is the very corner stone of democracy. It is with full appreciation of the wisdom of retaining local control over purely local affairs that the writer approaches the subject of exclusive federal control over railroad rates.

#### NATIONAL CONTROL OVER NATIONAL AFFAIRS IS ESSENTIAL

Under our American form of government it is recognized that certain functions of government, the exercise of which affects the nation as a whole, must be exercised by an authority which represents all the people. The powers delegated to Congress by the several states are therefore the powers which are national in their scope. In granting these powers to the national government, a state surrendered certain control over affairs within the limits of its boundary. Each state, however, gained more than an equivalent



in the freedom from annoyance through a like surrender of power on the part of every other state.<sup>1</sup>

Each state surrendered to the federal government the control over those things which affected interstate commerce; it did not surrender control over those activities which did not affect interstate commerce. Therefore the constitutionality of an assumption of exclusive control of all rates depends upon the answers to the questions, (1) does the exercise of the authority of the state over intrastate rates affect, or threaten to affect, interstate commerce, and (2) is the complete control over all intrastate rates by federal authority necessary in order that an effective method may be established for the elimination of state interference with interstate commerce.

#### HOW LOCAL CONTROL OVER INTRASTATE RATES AFFECTS INTERSTATE TRAFFIC

The effect of intrastate rates upon the movements of interstate commerce is shown by adjudicated cases too numerous even to cite. A reference to the more important of these cases will clearly indicate how the movements of traffic in interstate commerce are directly influenced by adjustments of state rates.

For more than fifteen years the shippers of Memphis, Tenn., have complained that traffic to and from points in Arkansas, which is naturally tributary to Memphis, has been diverted to Little Rock and Pine Bluff, Arkansas, by reason of a low scale of rates put into effect by the Arkansas Commission. In 1905 the Interstate Commerce Commission found that in the case of many articles the disparities in rates are greater than the profits ordinarily made by jobbers.<sup>2</sup>

Again in 1915 the Interstate Commerce Commission made a thorough investigation of the effect of the state rates in Arkansas upon traffic between Arkansas points and Memphis, and in its findings states:

It is undisputed that complainants at Memphis are actually competing with the shippers located at Arkansas points, and that in many instances the Memphis

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<sup>1</sup>See masterly address by Alfred P. Thom before the State Bar Association of Tennessee, June 25, 1915, entitled "A Right of the States."

<sup>2</sup>In the matter of Freight Rates between Memphis and points in Arkansas 11 I. C. C. 180 (1905).

dealer has been driven from Arkansas markets by the competition of the merchants and shippers of that state. The Memphis shippers being excluded from Arkansas on account of these state-made rates, Arkansas shippers and merchants are unduly preferred, while the Arkansas consumer is cut off from the competing Memphis market.<sup>3</sup>

It seems hardly necessary to refer to "The Minnesota Rate Cases."<sup>4</sup> There are facts set forth in the opinion in that case which are of striking significance. The state-made rates to the border cities were materially lower than the interstate rates to the cities just over the state line. The Circuit Court found that if discrimination were to be prevented, the reduction of the state rates to Moorhead, Minn., on the Northern Pacific Railroad, would necessitate the reduction in rates on that railroad to Fargo in North Dakota, just over the line, which in turn would necessitate reductions to other points in Dakota, which in turn would in the same way affect rates in Montana, and so on to the Pacific Coast. And yet the Minnesota intrastate traffic on the Northern Pacific, in the year under investigation (1906) was only 2.67 per cent of its entire freight business, and only 5.79 per cent of its entire passenger business!<sup>5</sup>

In 1912-13 the Interstate Commerce Commission made a most exhaustive investigation of express rates and established the so-called uniform zone and block system for all interstate express movements in the United States. After it had been put into effect the same system was submitted to the commissions of all the states and forty states adopted the same system and basis of rates. South Dakota was one of the states which did not adopt it, but instead put into effect rates which were 40 per cent lower than those approved by the federal tribunal and by most of the state commissions.<sup>6</sup> This resulted in a complaint by commercial interests of Sioux City, Iowa, before the Interstate Commerce Commission, in which it was alleged that Sioux City was at a distinct disadvantage in the markets of South Dakota in competition with the jobbing towns of that state.

<sup>3</sup> *City of Memphis v. C. R. I. & P. Ry.*, 39 I. C. C. 256, 263 (1916).

<sup>4</sup> 230 U. S. 352 (1913).

<sup>5</sup> *Shepard v. Northern Pacific Railway Co.*, 184 Fed. 765, 776 (1911).

<sup>6</sup> *American Express Co. v. Caldwell*, 244 U. S. 617 (1917).

The Commission found that:

These differences in rates place a burden on interstate shippers and give a corresponding advantage to intrastate shippers, thus accomplishing an inevitable restriction of shipments in interstate commerce or shrinkage of profits.<sup>7</sup>

It is immaterial what the motive may be for imposing schedules of state rates lower than rates for transportation across state lines under similar circumstances and conditions. If such an adjustment of rates does in fact directly affect interstate commerce, the action of the state authorities is an interference with commerce which the constitution declares shall be subject to federal regulation. But it is not without interest to note the frankly avowed motives of the Texas Railroad Commission to adjust rates in such a way as to check traffic movements from other states in order to build up distributing centers and manufacturing plants within that state. In the celebrated Shreveport case<sup>8</sup> the Interstate Commerce Commission said:

There appears to be little question as to the policy of the Texas Commission. It is frankly one of protection to its own industries and communities.

It then proceeds to quote from reports of the Texas Commission in which a definite protective policy is declared as the underlying principle in making its rate adjustments. This is set forth and summarized in one sentence by the Texas Commission,

To Texas as a whole it is of the most vital concern that there should be within her limits at proper places jobbing and manufacturing establishments.<sup>9</sup>

And how does the Texas Commission go about this self-imposed duty of fostering home industry by rate adjustments? Shreveport, in Louisiana, has been supplying the markets in eastern Texas. It must be shut out. Therefore rates must be made so low from distributing and manufacturing centers in Texas that the country stores and the consumers will be compelled to trade in the home markets. Generally speaking the Texas rates are about half what the rates are from Shreveport to points in Texas for the same distances—and the Interstate Commerce Commission finds that the circumstances and conditions for interstate and state traffic are

<sup>7</sup> *Traffic Bureau of Sioux City v. American Express Co.*, 39 I. C. C. 703 (1916).

<sup>8</sup> *Railroad Commission of La. v. St. Louis Southwestern Ry. Co.*, 23 I. C. C. 31, 35 (1912).

<sup>9</sup> *Ibid.* p. 35.

substantially similar. For example, if a farmer in Marshall, Texas, wants to buy a wagon he finds that he can send to Dallas, 147 miles away and pay a freight rate of 36.8 cents per hundred pounds, whereas if he buys in Shreveport, which is only 42 miles away, he must pay 56 cents per hundred pounds. Or a man at Longview, Texas, can buy his furniture at Dallas, 124 miles from home, and pay a rate of 24.8 cents per hundred pounds, whereas if he buys in Shreveport, 65 miles from home, he must pay 35 cents per hundred pounds.<sup>10</sup> Such a rate adjustment certainly is as effective as a protective tariff; it directly interferes with the movement of trade through preferential adjustment of transportation charges.

These cases which have been cited are merely illustrative of a situation which exists, to a greater or less extent, in almost every section of the country. Since the Shreveport case was decided in 1912 more than one hundred complaints have been filed with the Interstate Commerce Commission in which it is alleged that state-made rates discriminate against interstate rates. Each state which secures a selfish advantage for its industries through the fixing of low rates simply spurs on its neighbor to seek to conserve its trade to its citizens. Louisiana bitterly complained about the selfish policy of Texas, but it in its turn established a basis of rates which tended to compel its citizens to trade in Louisiana to the disadvantage of industry in Mississippi. Each state seeks to outdo its neighbor in restricting interstate trade.

These illustrations show that the authority of the state over intrastate rates directly affects interstate commerce. The menace is growing more serious each year, and unless effectively checked it will result in serious interference with the right which the citizens of every state have under the constitution to trade freely with the citizens of every other state. This is not a mere technical right—it is a right which lies at the basis of commercial prosperity.

We are drifting back to the intolerable conditions which prevailed under the Confederation, when New York imposed duties on dairy and farm products coming from New Jersey and on firewood from Connecticut; when Connecticut imposed duties on articles imported from Massachusetts; when Massachusetts exacted export duties on calf skins and other commodities, and when almost every state sought to exclude the products of every other state which

<sup>10</sup> *Houston & Texas Ry. Co. v. U. S.*, 234 U. S. 342 (1914).

came in competition with its own products, or to retain its own peculiarly prized products at home. The principal reason for the adoption of the Constitution, as every reader of history knows, was to give to all the people equal commercial opportunities, but today the railroad rate-making policy of many of the states is seriously infringing on those opportunities.

DOES A REMEDY EXIST IN THE POWER OF THE INTERSTATE COMMERCE COMMISSION TO REMOVE DISCRIMINATION?

But it is urged that an ample remedy exists, and that it is going beyond the necessities of the case, and perhaps beyond the constitutional power of Congress, to vest in a federal tribunal all power over all rates, both state and interstate. The Shreveport case<sup>11</sup> is cited as authority for this. In that case the Interstate Commerce Commission found that the Texas-made rates were unduly prejudicial to points in Louisiana; that the interstate rates were reasonable. But the Commission had before it the problem of removing the discrimination. What it said about the reasonableness of the interstate rates was largely in the nature of dicta. The Commission clearly indicated that the discrimination could properly be removed by the railroads by increasing the state rates to the basis of the interstate rates. The order of the Commission, which was before the Court, however, simply ordered the discrimination removed, and obviously a discrimination may be removed by reducing the higher rate (in this case the interstate rate) to the level of the lower rate, as well as by raising the lower rate to the basis of the higher rate. The essential part of the order is as follows:

It is further ordered, That the defendant . . . . cease and desist . . . . from exacting any higher rates for the transportation of any article from Shreveport, La., to Dallas, Tex. . . . than are contemporaneously exacted for the transportation of such articles from Dallas, Tex., towards said Shreveport for an equal distance, as said relation of rates has been found by the Commission in said report to be reasonable.

The carrier is left free to comply with the order in any one of three ways: (1) by raising the lower rates to the basis of the higher rates; (2) by lowering the higher rates to the basis of the lower rates; or (3) by raising one and reducing the other to a common level. The carrier can therefore comply with the order of the fed-

<sup>11</sup> *Houston & Texas Ry. v. United States*, 234 U. S. 342 (1914).

eral Commission, and at the same time comply with the order of the state commission by reducing its interstate rates to the basis of the state rates. And in this way the state has forced a basis of rates upon interstate commerce which is lower than the federal tribunal has found to be a reasonable basis. If the carrier chooses, however, to adopt the higher basis on all traffic it at once becomes subject to the interminable litigation such as has grown out of this Shreveport case. This particular case has been in the courts for years and no relief is in sight. The discrimination has existed for more than twenty years.

The Supreme Court in this case lays down the principle that when the Commission finds that a discrimination exists between the interstate and the intrastate rates and that the interstate rates are not unreasonably high the carrier *may* remove the discrimination by increasing the intrastate rates. It is not *compelled* to remove it in that way. There are very practical reasons why a railroad would prefer to follow the easier course of removing the discrimination by reducing the interstate rates. The states have almost unlimited powers over the corporations which receive their charters from the states. Except in a comparatively few cases the charters are subject to amendment and repeal. By antagonizing the state authorities the railroad places itself in a difficult and almost impossible position. There may not be serious danger of the repeal of a charter, but there is menace of amendment. Moreover if the railroad desires an extension of powers it is seriously embarrassed by its disregard of the state laws. A striking instance of this is afforded by a conflict of authority which arose in the state of New Hampshire.<sup>12</sup> In 1883 the legislature passed an act authorizing the consolidation of railroads provided rates should not be raised on the lines thus consolidated. The Boston and Maine Railroad raised its rates. The state court held that the statute applied to interstate rates as well as to state rates, and injunction proceedings were begun in 1907. The railroad asked the legislature to repeal the statute. For ten years there was litigation before the courts, hearings before the Public Service Commission, and appeals to the legislature, and it was not until 1917 that the statute was amended, and

<sup>12</sup> See reports of New Hampshire Public Service Commission beginning with volume I (1911) to date.

then only to the extent of giving to the Public Service Commission the same power over rates that the legislature had claimed. In other words the judgment of an expert tribunal has been substituted for the inflexible barrier of statutory restriction. But the state has not relinquished its claim to control interstate rates. It would not be asserted that the state could fix interstate rates against the protest of the railroad nor that it could compel a reduction in interstate rates, nor restrain the railroad if it should file a schedule of such rates which did not meet the approval of the state commission.

But the assertion is made that the railroad can comply with the state statute by *refraining* from filing all such schedules. In 1913 the Interstate Commerce Commission investigated the subject of rates on the Boston & Maine Railroad and found that an increase in rates was necessary. But the control which the state of New Hampshire claimed to have over interstate rates prevented any effective adjustment of rates without the consent of that state. As prompt action was necessary the Interstate Commerce Commission, through Commissioner C. A. Prouty, and the State Commissions of Maine, Vermont and Massachusetts, as well as of New Hampshire, through which states the Boston & Maine Railroad runs, agreed that the rate adjustment should be worked out by the Public Service Commission of New Hampshire.

In the report of the Conference of State Commissions, presided over by Commissioner Prouty, the following significant statement occurs:

The commission of New Hampshire under the peculiar circumstances obtaining in that state, must approve rates before they can be established.

When the Boston & Maine leased the roads located in New Hampshire the legislature of that state provided that the leases should be upon condition that no advance in rates, either state or interstate, should ever be made. Subsequently advances were in fact made and proceedings were begun attacking these advances. The Supreme Court of New Hampshire held that the obligation not to advance rates was binding upon the Boston & Maine even as to its interstate charges. Assuming that this decision is wrong as to interstate rates, and that the Boston & Maine might, notwithstanding the condition upon which these leases were taken, advance its interstate transportation charges, still it is evident that to do so might avoid the leases themselves and therefore disrupt the Boston & Maine system. As a practical matter, therefore, the condition is obligatory. The legislature of New Hampshire, recognizing that possibly in justice to this company its transportation charges should be increased, has provided that the



Commission of that state may permit such advances, but that no advances shall be made until they have been affirmatively sanctioned by that body.

It results, therefore, that the Boston & Maine can advance no rates, either intrastate or interstate, which apply within the limits of the state of New Hampshire without the approval of the Commission of that state."

This situation illustrates not merely the extent to which a state may embarrass a railroad in the adjustment of its rates, but the helplessness of federal authorities, when, as a practical matter, it becomes necessary to increase rates. There is no doubt that the federal government has the power to regulate the interstate functions of carriers, but here is an instance where the federal authorities recognized the practical necessity of deferring to the state authorities and of permitting them to establish the standard of reasonableness of all rates, and thus to establish the standard of service.

#### THE NATION SHOULD DETERMINE THE STANDARD OF NATIONAL SERVICE

If the supreme authority over interstate rates thus finds itself embarrassed, how can it be expected that a railroad, which may derive all its corporate rights from a state, will feel free to ignore the mandates of the state even though legally permitted to do so? In order that regulation may be effective the federal authority must leave to the railroad no alternative but so to adjust its rates as to conform to the standard of reasonableness as determined by that authority. Under the law as it exists today the railroad has the alternative of conforming rates to meet the ideas of reasonableness of the state or of the nation. This means that if the nation establishes a standard of rates to meet its conception of the standard of service, the railroad may ignore such standard and adapt its service, both local and national, to conform to the ideas of the state authorities. This follows from the fact that there is no absolute standard of reasonableness of rates.<sup>14</sup> If there were such an abso-

<sup>14</sup> 4 N. H. P. S. C. Rpts., p. 89 *et seq.*; also 1 Mass. P. S. C. Repts. 92.

<sup>15</sup> That there is no absolute standard of reasonableness is recognized in the case of the *American Express Company v. Caldwell*, 244 U. S. 617, where the court says:

"But the finding that discrimination exists and that the interstate rates are unreasonable does not necessarily imply a finding that the intrastate rates are unreasonable. Both rates may lie within the zone of reasonableness and yet involve unjust discrimination."

lute standard, then unquestionably the standard as determined by the national authorities would have to prevail in all national transportation. If a schedule of rates escapes confiscation—that is, if it yields a fair return upon the value of the property—it cannot be set aside by any court. But such a standard of rates may be entirely inadequate to give to the public a service which the public demands or which the national authorities deem necessary for the national needs. The national authorities may deem it necessary that railroads should increase their trackage, enlarge their terminals and provide additional equipment; the state authorities may regard the present facilities as adequate. The national authorities establish rates which will give to the railroads sufficient credit to enable them to raise the money for these extensions and improvements; the state authorities refuse an increase in rates on the ground that the present rates yield a fair return and that it is not necessary to increase facilities, and thus increase rates. The standard of rates determined by the federal authorities is reasonable from the point of view of the nation; the standard of rates determined by the state authorities is reasonable from the point of view of the state. If in consequence of these two standards discrimination exists against interstate traffic, under the law as it stands, the railroad may adopt either standard. Such an option ought not to be given. It should not be in the power of the railroad which seeks to avoid the ill will of the state to deprive the nation of that standard of transportation which it desires.

There is a fundamental reason why two standards of rates, and consequently two standards of service, cannot be maintained. If the nation establishes one standard and the state establishes another standard, with rates adapted to meet the two standards, the state in its transportation nevertheless uses the facilities which are employed in interstate transportation. There cannot be separate trains or separate cars or separate roadbeds, and if the nation establishes one basis the state gains the benefit of such standard without contributing its fair share to its maintenance. The state which is satisfied with a low standard of service profits at the expense of other states with higher standards of service, and at the expense of all those who ship in interstate commerce.

### INTERSTATE COMMERCE COMMISSION CAN INVESTIGATE ONLY THE RATES COMPLAINED OF

The inadequacy of the remedy, which is directed simply against unjust discrimination, is further illustrated by the limitations under which the Interstate Commerce Commission acts. It can direct its investigation only against the rates complained of. In the South Dakota Express case<sup>15</sup> the complaint was directed to the discrimination against shipments from Sioux City, Iowa, and the Express Company had authority under order of the Commission to change only the rates applicable to Sioux City, although the same discrimination existed throughout that territory. The effect of the order was to place that city in a preferential class and thus in reality to accentuate the discrimination. The Illinois Passenger Case,<sup>16</sup> recently decided by the Supreme Court, affords striking illustration of the inadequacy of the present remedy. A rate of two cents a mile was established by the Illinois Legislature. The interstate rate was two and a half cents a mile. Under these rates the fare from Chicago to East St. Louis, Illinois, was \$5.62, and to St. Louis, Missouri, only nine miles farther, \$7.50. The Commission found that a discrimination existed and that 2.4 cents was a reasonable rate for both classes of traffic. The railroads attempted to put in force a 2.4 cent rate throughout Illinois, but the court held that it could do this only as to those points which had been the subject of the complaint.

### INTERSTATE COMMERCE COMMISSION MUST COMPLY WITH THE REQUIREMENTS OF DUE PROCESS OF LAW

Furthermore, the investigation must be conducted in such a way as to conform strictly to the constitutional requirements of due process of law; that is, a public hearing must be held, of which all parties in interest must be notified, evidence must be received, and the finding based on the evidence, and only upon the evidence offered at the public hearing.<sup>17</sup>

Even if the carrier had the power to initiate a complaint before the Interstate Commerce Commission, based upon alleged dis-

<sup>15</sup> *American Express Co. v. Caldwell* (*supra*).

<sup>16</sup> *Illinois Central Railroad v. Public Utilities Commission* (Jan. 14, 1918).

<sup>17</sup> *Interstate Commerce Commission v. Louisville and Nashville Railroad*, 227 U. S. 88 (1913).

criminatory state-made rates, it would be compelled to try out that issue under the forms of judicial procedure, involving indeterminate delay, because of the necessity of a judicial determination by the Commission. If the Commission had the exclusive power over all rates, the carrier could adjust its tariffs so as to remove the discriminations, and the rates would become effective after the Commission had given its approval. There would be no necessity for a judicial trial. Before the amendment of August 9, 1917, the rates would become effective, unless suspended by the Commission; under that amendment they become effective "after approval thereof has been secured from the Commission." In other words, the Commission acts in a strictly administrative manner, issuing no order and making no judicial determination, but exercising its judgment as an expert body especially charged with the protection of the public interests.

#### RATES INEXTRICABLY INTERWOVEN

An important practical reason why there should be a single control over rates is because rate structures are the most delicately adjusted mechanism. A change in a single rate may compel changes in thousands of rates in order to meet competitive conditions or to prevent discrimination. What has been said about the effect of state-made rates in Minnesota illustrates this. A most striking instance of the effect of the change in a single rate upon many rates is afforded by a case recently heard before the Public Service Commission of Pennsylvania.<sup>18</sup> This case has not yet been decided but the facts are taken from the testimony submitted. A complaint was filed attacking the rate on coal from Pittsburgh to Philadelphia. There are in Pennsylvania, West Virginia, Ohio and Indiana, numerous districts producing coal which is sold by the operators in competition with each other. Coal may move from the same district over competing railroads. The marketing and transportation of coal therefore are highly competitive. A reduction of 15 cents a ton from Pittsburgh to Philadelphia was asked by the complainants. It appeared in testimony that such a reduction in this rate would compel reductions from practically all coal districts in the states mentioned on account of the exceedingly intricate competitive situation, and that the railroads would lose a revenue of ten million

<sup>18</sup> *Pittsburgh Coal Operators v. Penna. R. R. Co.*

dollars a year if this slight reduction were made in a rate between two intrastate points.

#### RATES MUST BE ADJUSTED WITH REFERENCE TO THE STANDARD OF SERVICE

Before the war the shipping public came to a realization that the important thing about transportation was adequate service. The railroads contended that they could not give the kind of service which the public demanded upon the basis of rates permitted by public authorities; that they were forced to economize in order to meet expenses and have some return for their stockholders; that the impairment of their earning power affected their ability to raise money for improving their facilities. Today, in time of war, there is only one demand—and that is to transport freight and passengers with promptness. Shippers even are begging the public authorities to grant increases in rates so that the railroads may properly perform their functions. To what extent the failure of the railroads is due to subjection to many masters it is not necessary to discuss. But the one thing which stands out clearly is that transportation is a national necessity and that there can be no different standards of services terminating at state lines. Federal authority must determine the standard, not only to meet the demands of national commerce in time of peace, but in its supreme responsibility to protect and equip the nation in time of war.

If this responsibility of determining the standard of transportation is national, then the power to regulate the revenues which are the only means of effecting the standard must be national. As facilities employed in intrastate transportation cannot be separated from the facilities employed in interstate transportation, the burden of maintaining the one must be the same as the burden of maintaining the other, and the burden and the incidence of the burden must be determined by the supreme authority.

The rate question is usually discussed by the public authorities as a thing to be determined by reference to about everything except that to which it is most related; namely, service. There are labored discussions as to whether a schedule of rates will yield a certain per cent upon an engineer's estimate of what it will cost to reproduce the property. That is something which concerns merely the protection of the private rights of the owners of the property—

it does not help in the slightest to protect the public in its right to an adequate service. There are elaborate computations which purport to give the cost of particular kinds of service. Such computations, made upon hypotheses which reflect merely the accountant's guesses or economic theories, are valueless in determining an adequate rate. Rates in one section of the country are compared with rates in another section, but no thought is given to the kind of service required in the different sections.

The result is that many tribunals acting upon as many theories of rate making determine standards of rates which tend to produce as many standards of service—not consciously, for rarely do they give any consideration to the supreme transportation function of service, but as a necessary result of fixing revenues to meet the theoretical ideas of what are, *per se*, reasonable rates.

To SUMMARIZE: Service is national. The standard of service must be determined by the national authority. That standard cannot be made effective without the necessary revenues, and the amount of such revenues must be determined by the same authority which sets the standard of service. As the Supreme Court said in the Shreveport Case (*supra*):

It was recognized at the beginning that the Nation could not prosper if interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress, and of the agencies it lawfully establishes must control.

## HOW COULD NATIONALIZATION OF RATE REGULATION BEST BE ACCOMPLISHED?

BY MARTIN S. DECKER

A nationalization of all railroads in the United States, including the regulation of rates and all practices affecting rates, was accomplished on December 28, 1917, under proclamation by the President of the United States. All loyal citizens recognize the necessity of the act and admire without qualification the bravery of the action.

On that date the Interstate Commerce Commission and every state railroad commission temporarily ceased to exercise independent administrative or executive functions over the railroads of this country. They became subordinate investigating bodies, entirely subject to the superseding administrative and executive powers vested in the Director General of Railroads.

No order of any commission, federal or state, has today any binding force in law except with the consent of the Director General of Railroads; and any such order, if allowed to take effect and have application, may be suspended or nullified, with or without formal notice to the commission or any affected party, by action or authorization of the Director General. There is therefore no longer any real regulation of railroad rates by established tribunals throughout the United States.

Whatever rate regulating functions the Interstate Commerce Commission shall continue to exercise during the war will be in the main ancillary to governmental requirements, whether primarily arising because of wage increases or greater cost of railroad material, or because of the need for increased earnings from railroad operation to reach as far as practicable the measure of net earnings fixed by the government guarantee that they shall equal the average of net earnings for the past three years. It is clear of course that the state commissions will prefer to coöperate with the federal authority and not attempt unavailing antagonism to the provision of revenue deemed necessary for governmental railroad requirements by the Federal Railroad Director.

The public interest which the railroads of the country must now almost exclusively serve is that which pertains to the conduct and



winning of the war. The public interest in the enforcement of common right to the movement freely by railroad of all freight and passenger traffic as commerce between localities, without wrongful prejudice to persons or places, and with all reasonable service rendered by the railroads at just and reasonable charges, which has been in peace times the great underlying purpose of the granted monopoly of railroad service to common carrier corporations, is to-day relegated by necessity to the extreme rear of the great procession of considerations which constitute problems for quick and right solution under the paramount needs of the nation at war.

It is mere sound to say that "we have rushed into a definite policy of government acquisition and operation of railroads for the commercial benefit of the people." We have done no such thing. The railroads have been taken over "by the war, of the war, for the war." This has been specifically stated by the President in his proclamation and in his following speech upon the same subject before the Congress.

All tests hitherto applied in railroad regulation have been submerged in the great ocean of war necessity. That is today the great test under which regulation must be applied in practice during the war. Mere public service, as distinguishable from the many forms of war service, can only be crumbs that fall from the table of major railroad war operations. Every railroad rate regulation order sought to be applied by any railroad commission during the war must properly be construed as bearing the prefix, "*If the Director General of Railroads shall approve.*"

Think of it how we may, we come always to the great outstanding, unchangeable fact that the railroads of this country are operated today under requirements and prohibitions which correspond to martial law. No man or company can raise the sign "Business as Usual." That word "usual" has been changed to "possible." Men and corporations engaged in business of any description are now greatly concerned in securing transportation of their material and their agents upon any terms; they have little immediate concern with the price they have to pay for that transportation. It is not too much to say that regulation of railway rates, as we have commonly applied the term to fit normal business and normal commerce and to prevent discriminations and unjust rate exactions as affecting individuals, localities and kinds of traffic,

as become, in this disrupting war time, almost a moot question. At any rate the subject does not present in these sacrificial days any large practical question for urgent immediate solution.

But this gives us a wonderful opportunity to realize our sins of the past and prepare for a sinless future with respect to railroad operations and railroad regulation. In making that preparation let us cast aside the idea of adopting for peace times the government ownership of railroads, or of continuing in peace times the government operation of railroads which has been found necessary solely for war purposes. We are now undertaking a forcible temporary government lease of United States railroads upon a stated net earnings basis—a lease which could not be effected in peace times, and the mere announcement of which as having been proclaimed, but by no means consented to in legal form by the railroad owners, carries no solution in and of itself and projects no title in the lessee beyond the necessary occupation of the properties for war purposes.

It is difficult to understand how enlightened intelligence can predict any other result from ultra expensive war time operation by the government than a large deficit of net earnings below the proposed net earnings rental basis. Nor can the experience of such war time operation supply a sound basis of computation upon which to take over the railroads for peace time operation by the government either as owner or lessee. Moreover, that great body of men who produce and buy and sell, who ship and reship the raw material and the manufactures which in myriad forms constitute the commerce of the country, will not be satisfied to trade the present legal responsibilities and obligations of common carrier corporations and the developed system of government regulation, both at common law and by statute, and as settled by the courts, for the arbitrary and practically unassailable rules, regulations and methods of government operation, theoretically controlled as they may be by general statutory provisions. For whatever may be said, under any system of government operation the elements which compose and control the government policy must have first consideration in all regulations, while under private ownership the railroad operations are required to be conducted always with first regard to the paramount public interest and rights of those whom the owners, in return for the public grant, have undertaken to serve. For example, there is no real federal common law. Shall we cast aside the multitude of

rights now existing at common law as against railroads in the mere hope that the government will voluntarily observe them? Again, have we any ground for believing that a government operated railroad system in peace times will more readily respond without penalties to the rate or service requirements of a shipper or section of the country than a railroad corporation will with regulations applied under penalties for non-observance? We who submit, with or without protest, to the frequent poor service of the mails, which is only a single service, will answer "No" for the complicated services and rates involved in the carriage between thousands of localities of so many thousands of commodities and for the competitive interests of millions of shippers and consignees. And then we cannot disregard the blight which could be cast upon commercial interests as well as the whole public interest under the political influences that may so insidiously control not only the railway operations but also the elections through this control of the railways.

In preparing for the future we must still look forward to regulation, but it should be a new regulation. We must first realize that the old regulation of rates and practices affecting rates has failed. We see now as a nation of individuals what was perceived before by only a small class of individuals, that the revenues of the railways have not been sufficient, as a whole or for most roads individually, to pay the frightful increases of operating costs and yield sufficient in net earnings, after reasonable dividends, to permit the carrying of considerable balances each year to surplus for application to the cost of necessary future additions to lines, yards, terminals, and equipment or other contingent corporate purposes. Of course the result has been a limitation upon railway credit. Large discounts have been borne in the sale price of railway securities, and there has been restriction of all railway betterments and additions to those imperatively required at the time or in the time immediately to follow. The cost of money for the capital purposes of the railways has been extreme. The cost of floating short term notes to pay current debts or temporarily to meet maturing bond or note obligations has gone many points beyond the ordinary, sometimes termed legal, interest for loans. And the subsequent taking up of these notes, or directly of maturing bonds, by long term bonds has often required the issue of bonds largely in excess of the face value of the securities to be funded, so that many and often large excess issues, as well as

discounts, have here again been involved. This has not meant arbitrary exactions by bankers. It has meant that the sale credit of the railways for their securities has been low as compared with other offerings in the financial markets at the same times. The railway corporations have had to take on these extraordinary debt burdens and they represent in a real sense part of the cost of the property. The rates of the companies have not been sufficient in most cases to admit of the amortization of these extraordinary debt burdens and charges, to meet the current requirements of general debt charges and to give some proper return to the stockholders.

We have been blissfully oblivious to the facts that every railway company must constantly add to its facilities in order to serve economically the growing demands for service; that nevertheless every few years there comes a period of traffic recession, sometimes a long period, when many cars and engines are idle and much terminal space is empty; that in other years every facility and terminal of the railway are strained to the uttermost use, and are inadequate to supply the public with the service then demanded. A prudent manufacturer with part of his factory or equipment idle in recurring periods would in some way charge into his expenses or against his corporate income for the year the average profits lost through non-use in the idle period of part of the factory or equipment. He would raise his prices to make up for his losses in dull periods to the fullest extent possible. No such prudent consideration has been taken into account in dealing with the railways.

We have failed to realize to the full that the railway business of the United States is the biggest business on earth; that its main purpose is to serve all other business; that it is in essential respects a part of all other business and must be conducted upon business principles if it is to be successful.

All rate regulations affecting the amount of general railway revenues has proceeded upon the idea of necessary restriction and without assumption of the duty of railway protection. An exception to the prohibition of rebates and passes, although it was intended primarily to prevent discrimination against the individual railway patron and not for any declared purpose of protecting railway revenues. There were indeed many who claimed the prohibition was an attack upon the ability of the railways to get the greatest amount of revenue. Unquestionably that prohibition has cut off favoritism

to selected shippers and industries, stabilized rates and fares, benefited all shippers as a class and all railways as a whole. No voice now raised anywhere in favor of the old vicious rebate and pass system.

We now see plainly that the regulation of railway rates must extend to full protection of the railway business in order to insure the full rendering of railway service to the public at all times and under all conditions. If the Interstate Commerce Commission had been charged with the duty of requiring needed railway improvements fifteen years ago, together with the correlated function of efficiently regulating the capitalization of the railways, the discharge of those great duties would doubtless have brought to the Commission a responsibility for necessary protection that would have been strongly evident in recent years in determinations involving proposed increases of rates.

The President's great sentence that "The world must be made safe for democracy" went ringing through the nations and is still thrilling the hearts of men. His proclamation taking control of the railways that they might be made into a single system to serve efficiently and help save this democracy in war time has shown us our opportunity to let or make the railways save themselves for public service in the coming time of peace. The 262,000 miles of railway in this country now constitute a single system. Why not give the railways authority in law to operate as a single system in peace time so far as service needs may require? When the railways go back to their owners for operation let them be returned with statutory direction to continue operations as a single system in whatsoever way economy consistent with good and sufficient public service shall demand. That would be real national regulation affecting rates as well as service. Let us erase the anti-trust laws from the statutes so far as they apply to railways, and repeal the anti-pooling section of the Interstate Commerce Act. Let the railways pool their earnings and their equipment as well. Let us even, in the public interest for real efficient service, direct them by statute to form and operate an over-lying equipment company, by which needed equipment can be had by any road sufficient to meet all traffic demands at all times and can be returned when the need has passed. Not only let them, but, if good operation demands, make them, use yards and terminal and even tracks in common. Let us strike the shackles of restrain

from all railway progress towards continuously efficient public service. In short, legalize railway combinations and railway pooling under adequate government control, which control should include service as well as rate regulation and the ordering of improvements to railroad property with supervision of all new capitalization. These old prohibitory anti-trust laws and anti-pooling laws were never necessary in railway regulation. They are now opposed to the sentiment of the time and they have always made the service of railways more costly to the people. Competition has no place in public service. The public can be well served only by the combined and directed energies and resources of all public servants having like duties to perform.

It is not generally remembered that a legalized pooling bill passed the House of Representatives about the year 1895, and failed of passage in the Senate because of the approaching close of the session. This was after passage of the Sherman Anti-Trust Law, which was enacted in 1890. If the legalized pooling bill had become law, the anti-trust law would not have had further application to railroads. Twenty-three years ago we came near realizing in law-making that which it is apparent we must do in the present railroad crisis—recognize that these interlacing rail lines carrying the products of every market into every other market must be regarded in law as well as in fact as the American railroad system, to be operated in common service for the public use. Every railroad is a monopoly connected and used with every other railroad as a general railroad monopoly. What a paradox it is to say that such a necessary monopoly shall be subject to an anti-monopoly law! Today the government is itself a railroad monopoly because anti-monopoly laws have made the railroads unable to cope with the great problem of efficient war time service.

The answer to the title of this paper is plain: mere regulation of railway rates of a repressive character has failed. With anti-trust laws and anti-pooling restrictions in force many large economies of operation have been impossible. Contracts between the carriers to enable use of the roads as a single system in the better and economical service of the public have been forbidden by law. Guarantees of traffic to weak roads have been unlawful. The stress of traffic upon strong roads has broken down their efficiency. It is not enough that the Interstate Commerce Commission shall permit

increases in rates from time to time to some or all railroads. The nationalization of railway rate regulation should provide for orders by the Interstate Commerce Commission *requiring increases*, as well as decreases, of railroad rates. The whole viewpoint of our regulating traditions must change. The regulation of rates should be based upon a required high grade of service, not upon any grade of service. The regulating authority should have power to require that high grade of service and the property improvements requisite thereto. The regulating authority should have power to pass upon the issues of railroad securities and restrict such issues to railway capital purposes. There should be a Federal Railroad Loan Bureau, as there is today a Federal Farm Loan Bureau. As to railroads, the anti-trust and anti-pooling laws should be repealed and railroad combinations and railroad pooling, under supervision and restriction by the Interstate Commerce Commission, should be legalized. The investigating powers of the Interstate Commerce Commission should be constantly employed with a view to determining whether particular classes of railroads are charging rates high enough, under traffic conditions from time to time prevailing, to enable them to discharge at all times their charter obligations to render sufficient and good service to the public; and if not, the issuance of orders directing revision of rates upward, and the kinds of traffic to which they should apply, should follow. This would be nationalization of railway rate regulation for the national welfare, and in the light of recent events it is plainly the best way that it can be accomplished. The railway rate adjustments as between sections and localities and kinds of traffic would go on of course and be regulated as heretofore.

More and more the development of railway regulation has indicated that efficient regulation means full railway supervision, but that such supervision must be beneficent, and in no sense a response to attacks upon railway capital required for maintenance and continuous improvement of railway property to make it always adequate for the public needs. Such supervision must base its action upon facts, and whenever so based the people will sustain and commend it.

The railroad companies have been rightfully complaining of state regulation of railway capitalization, not because regulation of railway capitalization is oppressive or unjustified, but that, while recognizing its merits, large systems extending through several states



ought not be subjected to separate regulation in this important respect by several independent governmental agencies; and that capitalization regulation of all interstate lines should be done by the single governmental authority which in other respects regulates interstate roads. The indictment so framed is sound, and state commissions themselves find no real objection to federal assumption of the duty of regulation, if a real and efficient system of capitalization regulation by the national government shall be established to apply to roads physically constructed across state lines.

The railroad complaint against state regulation of interstate rates stands upon quite another basis. There probably are constitutional difficulties in the way of complete assumption by federal legislation of the authority now exercised by the states over rates applying to transportation wholly within the states. The United States Supreme Court has consistently held that state legislation, whether fixing service hours for railway men, or requiring safety devices on railway cars, or prescribing maximum rates to apply within the state, and done directly by the legislature or by a commission created by the legislature, is void to the extent that it conflicts with regulation that has been lawfully applied by the federal government. If the new system of regulation suggested in this argument shall be fully provided, if the new rate regulation shall be based primarily upon required sufficient and good service to be shown first, or otherwise to be ordered, and if rates shall be adjusted first upon that prerequisite, with reserved resources provided by the roads always to meet extraordinary demands, it seems certain that such overshadowing regulation by the federal authority would speedily bring all state commissions into active coöperation with the new federal methods of regulation. The larger present need is to revise completely the national system of rate regulation and see what follows, rather than to waste energy now in arguing against state regulation of state rates which in some states is much more advanced along the lines here advocated than the present federal system of regulation. It is noted, moreover, that both the Interstate Commerce Commission and the state commissions have lately shown a most commendable coöperation in rate regulation matters, which ought to and would be fostered, and extended probably to all important matters, under the reforms in regulation here proposed.

Regulation of railways seems to be subject to important changes

about every ten years. Beginning with 1887, when the Act to Regulate Commerce became effective, we find that in 1897 the United States Supreme Court held that the Interstate Commerce Commission had no power to prescribe maximum rates; that in 1906, the Hepburn Act was passed giving the Commission that power and many other powers; and in 1917 came the war order taking over the railroads into government operation during the war. This would now seem to be the time to place federal regulation of rates upon a high service basis, since a high service basis is imperative if the tremendous commerce of the country which will require transportation after the war is to be well served.

The nationalization of railway rate regulation can best be accomplished by revision of the federal system of regulation to require the provision of continuous high efficiency of railway service; the fixing of rates to enable that high efficiency service always to be provided as a standard condition with all due allowances in rates for fair profits and necessary future improvements to railway property; the supervision of railway security issues; the marketing of railway bonds at fair prices; the compulsory expenditure of capital by the railways from time to time for property additions if not voluntarily undertaken; the legalization of railway contracts for combined and economical operations.

Successful regulation of rates must embrace all of these elements. If they should be incorporated into the system of national regulation, it will merely be the application of business principles to the world's greatest business. There will then be no complaint of over-regulation by carriers, although they will be more extensively regulated. There will then be little complaint by shippers against the amount of rates, because of satisfaction with the service and because with rates once adjusted under these conditions the operating economies with lowered cost of railroad loans will tend to cause reductions rather than successive increases in railway charges. The new system should be a constructive rate regulation, embracing at once all necessities of carriers in doing their work and the rights of the public in having that work well done,

## LEGAL QUESTIONS INVOLVED IN NATIONALIZATION OF RATE REGULATION

BY WILLIAM E. LAMB

Any plan placing railroad rates under complete federal control will arouse discussion as to the power of Congress on the one hand and the rights of the states on the other. While the discussion may assume various forms and appear to cover numerous questions, yet all are included in one—the power of Congress to enact legislation that will completely nationalize rate regulation.

Since the decision of the Supreme Court in the Shreveport case,<sup>1</sup> the adherents of nationalization insist that the power of the federal government has been fully determined, and national regulation in the fullest sense is but a matter of choice in the form of the law. The opponents, however, vigorously deny that Congress possesses the necessary power and advance numerous reasons in support of their position, most of which, however, relate to the extent to which the federal government has exercised its powers in past or present legislation. In a measure they present questions of construction rather than questions of power. They directly challenge the federal power by asserting: (1) that each state has the absolute power to determine the amount of each rate to be charged for rail transportation between points within its borders; (2) that a transfer of that power is essential to complete federal control, which would require a constitutional amendment; (3) that the enforcement of the act to regulate commerce in harmony with the decision in the Shreveport case would result in a violation of the due process clause of the fifth amendment, a question not considered in the Shreveport case.

### VIEWS OF OPPONENTS OF COMPLETE FEDERAL CONTROL OF RATES

As an analysis of that case appears in a previous chapter, it seems more appropriate first to present the views of the opponents of complete federal control, including without distinction those re-

<sup>1</sup> *Houston, East and West Texas Railway Company v. United States*, 234 U. S.

lating to erroneous construction with those which assail the federal power.

It is claimed that the power of the states to legislate concerning their internal commerce is as full and complete as the power of the federal government, covering the field of interstate commerce which was clearly recognized and declared in all of the decisions of the Supreme Court, commencing with *Gibbons v. Ogden*<sup>2</sup> and ending with the Minnesota rate cases.<sup>3</sup> The statements in various decisions, as to lack of power in a state to enact legislation affecting interstate commerce, are said to have been aimed at state legislation which by its terms extended beyond the territorial limits of the state, though not including the resultant effect that legislation confined solely within the borders of the state might possibly have upon outside economic, commercial or transportation conditions. In *Gibbons v. Ogden*<sup>4</sup> the legislation considered directly regulated interstate commerce, and was not confined to commerce solely within the state, and it is said that Chief Justice Marshall's statement that the power of the federal government extended to all external concerns of the nation, and all internal concerns affecting the states generally "but not to those which are completely within a particular state which do not affect other states and with which it is unnecessary to interfere," must have referred to state legislation which by its terms extended beyond its boundaries.

The right of states to fix the charges of public service corporations was challenged in *Munn v. Illinois*.<sup>5</sup> It was claimed that the regulation applied directly to interstate commerce, as in the ordinary course of trade the grain from a number of states would pass through the elevators at Chicago, the charges therefor having been fixed by an act of the Legislature of Illinois which was assailed in the suit. The Court held that the act was not a direct attempt to regulate interstate commerce and called attention to the familiar rule that even though there might be indirect regulation of interstate commerce, until Congress had entered that field the power exercised by the state was not unlawful, and further stated that under the facts in the case there was no interference with interstate

<sup>2</sup> *Gibbons v. Ogden*, 9 Wheat. 1.

<sup>3</sup> *Simpson et al. v. Shepard*, 230 U. S. 352.

<sup>4</sup> *Gibbons v. Ogden*, 9 Wheat. 196.

<sup>5</sup> *Munn v. Illinois*, 94 U. S. 113.

commerce. The decisions involving the regulation of railroads within the states, decided about the same time, of which *Chicago, Burlington & Quincy Railroad Company v. Iowa*<sup>6</sup> and *Peik v. Chicago & Northwestern Railway Company*<sup>7</sup> are illustrative, indicate, so it is said, that the references in the several opinions to the reserved power in Congress applied to legislation which in form affected interstate commerce, but as to which Congress had not yet legislated, especially as the decision in the *Peik* case covered legislation of the State of Wisconsin establishing rates on traffic originating therein but destined to points outside, which the court held valid because Congress had not exercised its power as to transportation of that character.

Following these decisions there was general legislative activity on the part of the states providing for more complete state regulation of railroads. The statutes from time to time came before the court for construction, and in *Stone v. Farmers' Loan and Trust Company*<sup>8</sup> the court reiterated the doctrine that "the state may beyond all question by the settled rule of decision of this Court, regulate freights and fares for business done exclusively within the state, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi." These statutes did not by their terms extend to transportation or commerce outside their respective borders, but in *Wabash Railroad Co. v. Illinois*<sup>9</sup> the court declared an act of the legislature of that state, which actually covered transportation both inside and outside the state, to be valid, because the highest court of the state had construed the law to apply only to transportation within the state, but added that without such construction by the state court the act would have been a direct regulation of interstate commerce which the state was without power to enact, even though Congress had not undertaken to legislate on the subject. The doctrine of the *Peik* case, *supra*, which had evidently misled some of the state legislatures was thus repudiated.

<sup>6</sup> *Chicago, Burlington and Quincy Railroad Company v. Iowa*, 94 U. S. 155.

<sup>7</sup> *Peik v. Chicago and Northwestern Railway Company*, 94 U. S. 164.

<sup>8</sup> *Stone v. Farmers' Loan and Trust Company*, 116 U. S. 307-334.

<sup>9</sup> *Wabash, St. Louis and Peoria Railway Company v. Illinois*, 118 U. S. 557.

A long line of cases<sup>10</sup> involving the rights of states to fix rates followed the Wabash case, and in each the power of the states was in question, and in each it was decided that the action of the states did not cast a burden upon interstate commerce. It is now claimed that it was never suggested that Congress might possess the power to determine the amount of a rate for transportation between points wholly within a single state until the decision in the Minnesota rate cases. In that case, it is said, that no doubt was entertained at the time of the decision in the Wabash case, *supra*, as to the rights of states to regulate transportation that was wholly within their respective borders,<sup>11</sup> and after discussing the decision in that case this language appears in the opinion in the Minnesota rate cases: "The doctrine was thus fully established that the state could not prescribe interstate rates but could fix reasonable intrastate rates throughout its territory."<sup>12</sup> It is further stated that the power of the state to fix reasonable intrastate rates extends not only throughout the state but to cities adjacent to its boundaries, and in exercising that power it is not bound to adjust its rates to correspond with the interstate rates established by carriers.<sup>13</sup> The Court then states that if there is a restriction on state authority it must be by virtue of the paramount power of Congress over interstate commerce and its instruments.<sup>14</sup>

It is further said by the opponents of federal control, that in the Minnesota rate cases it was expressly decided that Congress had not, in the Act to Regulate Commerce, undertaken to interfere with the powers of the states to fix rates within their territorial limits,<sup>15</sup> although the court did say that discrimination as between state and interstate rates could only be determined by the Interstate

<sup>10</sup> *Dow v. Beidelman*, 125 U. S. 680; *Chicago, etc. Railway Company v. Minnesota*, 134 U. S. 418; *Chicago, etc. Railway Company v. Wellman*, 143 U. S. 339; *Reagan v. Farmers' Loan and Trust Company*, 154 U. S. 362; *Reagan v. Mercantile Trust Company*, 154 U. S. 413; *St. Louis and San Francisco Railway Company v. Gill*, 156 U. S. 643; *Smythe v. Ames*, 169 U. S. 466; *Minneapolis and St. Louis Railroad Company v. Minnesota*, 186 U. S. 257; *Alabama and Vicksburg Railroad Company v. Mississippi*, 203 U. S. 496; *Northern Pacific Railway Company v. North Dakota*, 216 U. S. 579.

<sup>11</sup> 230 U. S. 415.

<sup>12</sup> 230 U. S. 416.

<sup>13</sup> 230 U. S. 416-417.

<sup>14</sup> 230 U. S. 417.

<sup>15</sup> 230 U. S. 423, 431-432.

Commerce Commission. It is said that this statement, however, is not significant when it is borne in mind that until the decision in *Baltimore & Ohio Railroad Company v. United States, ex rel. Pitcairn Coal Co.*,<sup>16</sup> it had been generally believed that the act to regulate commerce permitted courts to pass upon the question of discrimination, and such power had been generally exercised by them. The lower court in the Minnesota rate cases had specifically held that the state-made rates discriminated against interstate commerce and the observation of the Supreme Court of the United States as to the original jurisdiction of the Interstate Commerce Commission to pass upon that question appears to have been an answer to the claim of power on the part of the lower court.

The foregoing in a general way covers the claims of the opponents of complete nationalization of rate regulation regarding the powers of the federal and state governments up to the time of the decision in the Shreveport case, which either overruled the previous decisions of the Supreme Court, or resulted in erroneous construction of the Act to Regulate Commerce as well as the commerce clause of the Constitution.<sup>17</sup>

They further contend that the Shreveport case, although holding that certain activities of the Interstate Commerce Commission under the Act to Regulate Commerce had interfered with the rights of the states, in no sense covers the question of the power of Congress to determine the amount of any rate for transportation between two points wholly within one state.<sup>18</sup>

It is pointed out that the reports of the Interstate Commerce

<sup>16</sup> *Baltimore and Ohio Railroad Company v. United States, ex rel. Pitcairn Coal Company*, 215 U. S. 481, 498-9.

<sup>17</sup> *First Employers' Liability Cases*, 207 U. S. 463; *Gibbons v. Ogden*, 9 Wheat. 203-204: Within the state power is "that immense mass of legislation which embraces everything within the territory of a state, not surrendered to the general government: all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc., are component parts of this mass. No direct general power over these objects is granted to Congress; and, consequently, they remain subject to state legislation. If the legislative power of the Union can reach them it must be for national purposes; it must be where the power is expressly given for a special purpose or is clearly incidental to some power which is primarily given."

<sup>18</sup> 234 U. S. 353.



Commission subsequent to the one involved in the Shreveport case, show that the Commission has most noticeably refrained from the slightest attempt to claim the right to pass on the reasonableness of intrastate rates. They also call attention to the necessity for such right to enable the Commission to properly determine whether a state-made rate gives undue preference to state commerce when compared with a rate applicable to interstate commerce. It is asserted that undue preference must rest upon the fact that the state rate complained of is less than a reasonable maximum rate, but this claim is not supported by *American Express Company v. Caldwell*,<sup>19</sup> in which the court makes this statement: "The finding that discrimination exists and that interstate rates are reasonable does not necessarily imply finding that the intrastate rates are unreasonable. Both rates may lie within the zone of reasonableness and yet involve discrimination." A previous decision of the court is cited in support of the language last quoted,<sup>20</sup> but the language of the prior opinion,<sup>21</sup> referred to as ground for the authority, is as follows:

We agree with plaintiff (the Interstate Commerce Commission) that a charge may be perfectly reasonable under Section 1 and yet may create unjust discrimination or unreasonable preference under Sections 2 and 3. As was said by Mr. Justice Blackburn in *Great Western Railroad Co. v. Sutton L. R.*, 4 H. L., 226, 239: "When it is sought to show the charge is extortionate as being contrary to the statutable obligation to charge equally, it is immaterial whether the charge is reasonable or not; it is enough to show that the company carried for some other person or class of persons at a lower charge during the period throughout which the party complaining was charged more under the like circumstances."

The language last quoted seems to indicate that the charge exacted from the complaining party, while it might be reasonable in and of itself, did nevertheless, subject the complaining party to unjust discrimination because of other persons paying a lower rate at the same time for a like service. In other words, the reasonable rate complained of could not create discrimination against anybody save the party paying it, and that would be due to the lower rate enjoyed by other persons. It is therefore claimed, that a rate found by a state to be reasonable as a maximum charge for transportation

<sup>19</sup> *American Express Company v. Caldwell*, 244 U. S. 617-624.

<sup>20</sup> *Interstate Commerce Commission v. Baltimore and Ohio Railroad Company*, 145 U. S. 263-277.

<sup>21</sup> 145 U. S. 277.

between two points within its borders cannot result in undue preference or subject anyone to unjust discrimination. If unjust discrimination results thereby it must be due to the maladjustment of the interstate rates. It is also said that a rate found by the state to be reasonable as a maximum cannot properly be increased by the mere declaration of the Interstate Commerce Commission that it gives an undue preference to state commerce, the removal of which is required by an advance in the state rate, as such action on the part of the Commission can in no way be considered as passing upon the amount of said rate.

In this connection it is said that the Commission has given greater weight to the act of the state as establishing a case of undue preference than it has in considering the act of a carrier responsible for a like rate adjustment. Section 3 of the act to regulate commerce,<sup>22</sup> in dealing with undue preferences and advantages, does not specify the character of commerce that may bring about the undue preference. It may be found that certain interstate commerce may cast a burden upon other interstate commerce by reason of the maladjustment of rates, and thus bring about a violation of this section. And in view of this fact, it is then said that the Interstate Commerce Commission has in numerous cases<sup>23</sup> (of which the 2 cited in the footnotes are illustrative) held that a carrier may make a rate between a given point of origin and a destination on its line, without regard to the rate of another carrier from another point of origin to the same destination, and if the rate of the first carrier is not met by the second, neither is subject to the claim that it has violated the provisions of Section 3. And this has been the settled rule in the Supreme Court for many years.<sup>24</sup> But, say the opponents of federal control, because the state requires a carrier to establish a reasonable

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

<sup>22</sup> *Railroad Commission of Kansas v. Atchison, Topeka and Santa Fe Railway Company*, 22 I. C. C. 407-416; *Blodgett Milling Company v. Chicago, Milwaukee and St. Paul Railway Company*, 23 I. C. C. 448-449.

<sup>24</sup> *East Tennessee, Virginia and Georgia Railway Company v. Interstate Commerce Commission*, 181 U. S. 1, 18, 19, 20.

maximum rate for intrastate commerce, which a different interstate carrier declines to meet in its interstate business, the carrier obeying the act of the state legislature may be held in violation of Section 3, which forbids undue preferences, even though the transportation within the state is specifically eliminated from the application of the Act to Regulate Commerce.<sup>25</sup> It is said that both the court and the Commission have lost sight of the distinction between the application of the act to an interstate carrier, and the lack of power under the act to interfere with intrastate transportation handled by the interstate carrier; that transportation which may move free from the restrictions of the Act to Regulate Commerce can not possibly subject transportation governed by the act to unjust discrimination. The following illustration is claimed to demonstrate the unsoundness of the decision, both of the Commission and the court in the Shreveport case:

If carriers operating between Texarkana, Arkansas, and Dallas, Texas, and not serving Shreveport, decide to establish a rate between the first two points, they may do so provided the rate is not less than the cost of transportation, and other carriers operating between Shreveport and Dallas may meet the rate or not, as they see fit. If they fail to meet it and complaint is made before the Commission, and the latter adheres to its numerous decisions on the question, neither the carriers operating between Texarkana, Arkansas, and Dallas, nor the carriers operating between Shreveport and Dallas have violated Section 3. But if the carriers operating between Texarkana, Texas, and Dallas apply the rate between those points established by the State of Texas, and the carriers operating between Shreveport and Dallas do not see fit to meet it, and shippers of Shreveport complain of undue preference in favor of the shippers of Texarkana, Texas, the Interstate Commerce Commission may find an undue preference has been created by the carriers obeying the act of the State of Texas, although the Commission would have relieved the carriers from the charge if they had established the rate from Texarkana, Arkansas, or Texarkana, Texas, to Dallas volun-

<sup>25</sup> Section 1 of the Act to Regulate Commerce provides in part: "Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid. . . ."

tarily. A recent case in the Supreme Court, not yet officially reported,<sup>26</sup> seems to indicate that it would hold the carriers responsible for the voluntary establishment of an intrastate rate, if declared to unduly prefer intrastate commerce over interstate commerce.

These considerations, say the opponents of complete federal regulation, will require the court to adopt a different construction of the law whenever the question of the power of the Interstate Commerce Commission to determine the amount of a state-made rate is presented, and, as the lack of power in the federal government to determine the amount of an intrastate rate has been repeatedly declared by the Supreme Court, the only way by which that power which is essential to complete nationalization can properly be exercised, is through the medium of a Constitutional amendment.

It will be observed that the first two grounds upon which the opponents of federal control challenge the existence of the federal power necessary to bring it about, were not decided in the Shreveport,<sup>27</sup> the American Express Co.,<sup>28</sup> or the Illinois Public Utilities Commission cases,<sup>29</sup> and are therefore still open.

The third objection of the opponents of complete federal control raises a question of power resulting from an attempt to apply the decision in the Shreveport case. It is claimed that a reasonable maximum rate can not give an undue preference or create unjust discrimination against any other rate. This position is somewhat shaken by the decision in the American Express Company case, *supra*, but even so, it is said that whenever the Interstate Commerce Commission determines that a rate declared by a state to be reasonable as a maximum for transportation subjects interstate transportation to unreasonable prejudice and disadvantage because the interstate rate is higher than the reasonable maximum rate set by the state, the removal of the preference or disadvantage requires an advance in the state rate. This is essentially true, whenever in the same decision the Interstate Commerce Commission declares the higher interstate rate to be reasonable as a maximum.

When the state rate is advanced there is no tribunal before

<sup>26</sup> *Illinois Central Railroad v. Public Utilities Commission of Illinois*, January 14, 1918.

<sup>27</sup> 234 U. S. 342.

<sup>28</sup> 244 U. S. 617.

<sup>29</sup> See citation 26.

which a shipper enjoying that rate can go to test the reasonableness of it. If he appears before the Interstate Commerce Commission in the proceeding and attempts to show that the state rate is reasonable as a maximum, he is met with the statement that the Commission has no control over the rate in question, or the transportation moving under it, and that testimony relating to the matter is incompetent. The shipper can not go before a tribunal created by the state because under the decision in the Shreveport case, the act of the Interstate Commerce Commission is final. And thus the state shipper is put in this position: his rate is increased without an opportunity to be heard as to whether the advanced rate is just and reasonable as a maximum. The Act to Regulate Commerce declares every unjust and unreasonable rate to be unlawful. The state laws so declare. And it has long been the doctrine of the Supreme Court that no carrier could establish a state rate higher than the service was reasonably worth,<sup>30</sup> and for more than 30 years we have had the statutory declaration that unreasonable interstate rates were unlawful.<sup>31</sup> In other words, the shipper has the right to a reasonable rate, and having that right, unless he is provided a remedy for its protection, he has been denied due process.

The arguments of the opponents of complete national regulation, if not sound, are at least plausible, and discussion will not subside until the Supreme Court specifically passes upon the disputed questions.

If, however, the doctrine of the Shreveport case is sound, and the court continues to follow the principle announced, the opponents of complete national regulation have slight hope for the successful maintenance of their contentions. The three questions of power would then be answered in favor of the federal government, and especially the third, by the enactment of a law giving to the Interstate Commerce Commission the power, whenever complaint is made that a given state rate discriminates against interstate rates, to declare that ascertainment of the reasonableness of such state rate is essential to a correct determination of the existence or the

<sup>30</sup> *Smythe v. Ames*, 169 U. S. 466.

<sup>31</sup> Section 1 of the Act to Regulate Commerce provides in part: "All charges made for any service rendered or to be rendered in the transportation of passengers or property . . . as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

non-existence of the preference or discrimination, and thereupon to determine the reasonableness or the unreasonableness of the state rate as fully and completely as if dealing with an interstate rate.

#### NATIONALIZATION OF RATES A CONTINUING PROBLEM

It would seem to be immaterial, so far as federal power to nationalise rates is considered, whether the federal government continues to operate the railroads under the proclamation of the President, under date of December 26, 1917, or whether the federal government should finally purchase the railroads.

In any event the power to regulate, control, operate, or own must come from Congress, and it can exercise only the powers that it finds in the Constitution.

The joint resolution of April 6, 1917, declaring war against Germany, the joint resolution of December 7, 1917, declaring war against Austria, and Section 1 of the act approved August 29, 1917, authorizing the President in time of war to take possession of any system or systems of transportation (under which provisions the President found the authority for his proclamation), gave no greater power to the President than Congress could have given to any other officer of the government or to any tribunal created by it.

Congress must, in the first instance, decide whether or not it will exercise any power granted to it under the Constitution. When it determines to exercise a given power it may choose the form of the legislation that it deems necessary and appropriate for the exercise of the power.<sup>22</sup> Conditions existing at the time of the exercise of a power may determine in some instances whether the legislation adopted was necessary and appropriate to carry out such power. If the subject matter of the legislation is covered by a grant of power in the Constitution, and there appears to be some relation between the power and the legislation adopted, the legislation will be deemed to be necessary and appropriate.<sup>23</sup>

The power to declare a war is one of extreme responsibility and only compelling necessity will prompt the exercise of it. A state of

<sup>22</sup> Article I, Section 8 of the Constitution, contains grant of powers to Congress, the last clause of which is as follows: "And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers; and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof." *Legal Tender Cases*, 12 Wall. 538; *Northern Securities Company v. United States*, 193 U. S. 343.

<sup>23</sup> *McCulloch v. Maryland*, 4 Wheat. 418; *Logan v. United States*, 144 U. S. 82.

war creates an emergency that would justify, as appropriate and necessary, any kind of an act that would even remotely assist in the prosecution of the war. Under war conditions, a declaration by Congress that the railroads and other common carriers of the country were necessary for public use in carrying on the war would justify the most liberal construction of the law by which such properties were converted to the public use, as being necessary and appropriate to get the full use of the power. This is not to say, however, that limitations on Congressional action can be disregarded. While it is for Congress to declare the necessity for converting private property to public use, it must observe the fifth amendment when it comes to the matter of compensation.<sup>34</sup> And during the war, or after the war ends, if Congress should determine that full and complete regulation of commerce among the states requires ownership by the government, it could, under the provisions of the Constitution authorizing it to pass such rules and regulations essential to the carrying out of that power, properly provide for the manner in which the change of ownership could be brought about, subject at all times to the limiting provisions of the Constitution.

Then again, the government might at the termination of the war, by appropriate legislation take over the ownership of the carriers on the ground that they were necessary and essential for carrying on the proper functions of the government. They might properly be considered as necessary to the equipment and maintenance of the army and the navy, to the movement of troops, or materials and supplies to and from forts, arsenals, or other government factories, or buildings, as well as for the handling of United States mails. But in these instances, a transfer of the title to the real estate located in the various states would not give to the federal government complete legislative control thereover, unless the legislatures of the various states consented thereto.<sup>35</sup> The federal government would

<sup>34</sup> *Monongahela Navigation Company v. United States*, 148 U. S. 312.

<sup>35</sup> The Constitution, by Article I, Section 8, clauses 12 to 17, inclusive, provides as follows:

"The Congress shall have power . . . .

"To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

"To provide and maintain a Navy."

"To make rules for the government and regulation of the land and naval forces."



own such property the same as any other proprietor. It is not clear that the rule as to the legislative control over the real estate in the different states is any different if the federal government should take over the ownership of the railroads under the power in the commerce clause of the Constitution.

Even though the government becomes the owner of the railroads it is not believed that the President, or any other officer of the government who might be designated, or any tribunal created, could establish rates for the transportation of goods of private citizens, except on the basis of reasonableness. It would not be in keeping with the spirit of American institutions to permit the government to take over the railroads and then charge the shipping public rates that were unreasonable.

Rail transportation has become an absolute necessity to the commerce of the country. It is necessary because it is not possible for every community to produce everything it consumes; therefore the surpluses in other communities must be moved to the communities requiring them. If Congress should give to the President, or other officer of the government, or some tribunal created thereby, the power to establish rates without an opportunity for the parties in interest to be heard, the grant would be one of doubtful validity. But if Congress does possess the power to pass an act of that character, it seems clear that arbitrary action on the part of the person or tribunal exercising the power would not be immune from judicial interference.<sup>22</sup>

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"To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

"To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

"To exercise exclusive legislation in all cases whatsoever, . . . over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." *Fort Leavenworth Railroad Company v. Lowe*, 114 U. S. 331; *Chicago, etc., Railroad Company v. McGlinn*, 114 U. S. 545.

By Article I, Section 8, clause 7, the Constitution provides: "The Congress shall have power. . . .

"To establish post offices and post roads." *Cleveland Railroad Company v. Franklin Canal Company*, 5 Fed. Cases 2890.

<sup>22</sup> *Dodge v. Hitchcock*, 229 U. S. 162, 170-171.

## REGIONAL RAILROAD COMMISSIONS: THEIR RELATION TO THE STATE COMMISSIONS AND TO THE INTERSTATE COMMISSION

BY J. E. LOVE

Any possible discussion of this subject will suggest in the mind of the reader, at the outset, doubt as to the situation with respect to regulation that existed when the discussion was prepared. For this reason, let it be understood that the following observations are made in the light of the railroad situation as of January 10, 1918.

The writer would be exceedingly glad to be the author of a suggestion that would relieve or end the troubles of the transportation industry in its relation to the public, or to make such comment upon suggestions already made by others as would materially contribute to that end. Mr. Dooley once remarked that "a real statesman is the man who finds out which way the procession is going and grabs the stick away from the drum major." The writer would be glad to qualify as the statesman to lead the procession of transportation affairs to the goal of satisfactory regulation. But it is for him to join the procession,—not to lead it. The stick is in other hands.

The regional commission idea embraces any jurisdiction broader than that of state lines and narrower than that of complete and exclusive federal jurisdiction. It is given consideration because of discontent with conditions existing heretofore. The advocates of the idea, or of the development of an idea under some such name, fall naturally into two classes: persons who believe that any sort of state regulation heretofore known is bad and contrary to the interests of the country and the industry involved; and persons who believe that state regulation has not failed totally, but has failed in part, and should be superseded, at least in part, by something broader. Those who believe that state regulation, coördinated to the extent that it has been in the past with federal regulation, has worked satisfactorily or is the best available solution for the problem of promoting and protecting all interests involved, and those who believe the only solution to be exclusive and complete federal control or regulation are not in favor of regional commissions.

Another fact which may as well be stated before discussing suggestions of record on the subject is that, while a condition and not a theory confronts the country today, our subject deals strictly and exclusively with theory. The person who asks the public to listen to a presentation of views on this subject, therefore, runs more or less risk of being interrupted by someone rising to make the point that the subject is not germane to the situation.

Looking into the files we find that discussion touching this subject has been going on for five or six years. The nearest thing to a definite plan results from three or four ideas stated at different times, and suggests a system of regional commissions with working headquarters at various points throughout the country, such commissions to be organized with one of the members of the Interstate Commerce Commission or a person to be appointed by the President as chairman and including one representative from the personnel of the state commissions that are supplemented or supplanted by the regional jurisdiction.

So far as the writer is informed, this plan is the only one offered as anything between dual or state and federal regulation and regulation by the federal government exclusively. What is known as the "Philadelphia plan" and some other suggestions of similar character have received some consideration as offering a solution for problems heretofore troublesome, but they are, universally, predicated upon complete elimination of state regulation of any sort or in any degree. They need not and should not be discussed as suggesting regional commission control.

Writers on the transportation question, especially those openly expressing the feeling of the railroad managers on the subject, have long complained of the burden of responsibility to "forty-nine masters," intending by the interminable reiteration of this complaint to make the public believe that most of the railroads of the country have been accountable to forty-eight state commissions and the Interstate Commerce Commission. The fact that there are but forty-seven state commissions of any character having to do with utility regulation has escaped them, and they have never published a list of railroads subject to as many as nine, not to mention forty-nine, jurisdictions. But there is no use dilating upon this angle of the situation. Readers of this publication understand perfectly that the unfairness and inaccuracy of the complaint re-

ferred to are present in large degree in much of the propaganda in favor of reduced regulation and increased rates with which the country has been surfeited in recent years. But be that as it may, it is urged for the regional commission idea, as above described, that it would reduce the number of "masters" materially and thereby be of advantage.

It is further urged in support of this idea that matters of limited importance, that is, involving only state questions or state interests, would be considered and disposed of alike in all the states of the region if given the benefit of consideration by a regional commission; that uniformity would also be secured in rates, rules and regulations of various states of the regional jurisdiction in which, presumably, transportation conditions would be similar; that the imaginary state lines would be largely eliminated from consideration in dealing with most of the matters involved, resulting in a community of interest between members of state commissions, between the state and interstate commissions and also between the carriers and the various commissions to a far greater extent than has heretofore been the case; and that these results would be accomplished without complete relinquishment of the state control idea, which unquestionably would be relinquished by many states only under the most severe pressure.

To safeguard the federal government in its power over such matters as have heretofore been under exclusive federal control there would, of course, be available an appeal from decisions of the proposed regional commission to the Interstate Commerce Commission as at present constituted, and, as to matters now so appealable, to the Supreme Court of the United States.

Objections to the adoption of any such plan as herein outlined rest chiefly upon the ground that there would be entailed an additional expense of regulation, with further delay in getting results, and that, while a step in the right direction, it does not offer the complete relief that the situation demands. In other words, most of the objectors are in the position of refusing to consider. They desire complete elimination of state commissions and all semblance of state regulation, demand it as a *sine qua non*, and are willing to discuss nothing which in any way preserves that idea.

The writer does not at this time give his personal indorsement to the regional commission idea, nor does he reject it *in toto*. Con-

ditions known heretofore have gone and may never return. His experience and observation have resulted in the conviction, however, that there are questions, hundreds of them every month and thousands of them every year, even in a jurisdiction as limited territorially as that of the Oklahoma Corporation Commission, that can be handled, not only to the best advantage of all concerned, including the railroads, as they have been handled heretofore, by state commissions, but that cannot be handled satisfactorily by any federal board of control located at and operating from any single point. If the state commission is not to be continued as heretofore with power to receive and dispose of complaints arising on a moment's notice and demanding immediate disposal, something in its stead must be provided. That a regional commission organized on any plan that might be devised could handle such matters with satisfaction to the public is possible, but it is exceedingly doubtful.

The part that the state commissions, many of them, have played in bringing about a spirit of popular coöperation in increasing the efficiency of the transportation systems of the country as a war machine has been important, and has been performed more promptly and with better success than could have been accomplished through any governmental agency less local in jurisdiction than the state commission.

Some time before war was declared the Oklahoma commission began safeguarding the communities of this state against coal famine this winter. It induced the purchase of hundreds of cars of coal by dealers in communities that would have suffered acutely before this time had not this effort by the commission been put forth. A federal or even a regional authority could not have secured the car of the public as it was secured by the state commission, and the results secured had not the state commission been available for the expression of the need of the hour would undoubtedly have been relatively unimportant, if not negligible.

Train service for many towns in Oklahoma has been curtailed; physical connections have been denied; communities have been persuaded to be content with depot facilities clearly inadequate; delivery of cars of fuel or perishables has been expedited; building materials have been searched out in congested yards and hurried to destination with benefit to the contractor, the laborer and the car situation; the urgent need for cars for moving stock has been dis-

covered and the need supplied in scores of instances; and innumerable other complaints of many kinds have been handled informally but effectively with the result that traffic conditions and the financial balance sheet of both the carriers and the shipping public have been benefited. The railroads of Oklahoma have been enabled to do more to win the war because of the activities of the Oklahoma commission. Further, and perhaps even more important, complaint over the extraordinary situation has been brought to an irreducible minimum, converted into cheerful acquiescence, and finally into enthusiastic coöperation on the part of the public. This result has been accomplished, unquestionably, more quickly and more thoroughly than could have been done through any agency other than the state commission. The bearing of these facts upon the regional commission idea will be apparent.

George Ade, the Hoosier humorist, recently remarked, according to the government's daily *Official Bulletin*, that the declaration of a man between 30 and 50 to a man of draft age, that he would be keen to enlist if not too old, would not be believed, even if it were interesting. If the views here expressed by the chairman of a state commission on the subject of a proposal to seriously impair or abolish powers of a tribunal of which he is a member, and of whose value, financial, material and moral, to the public it serves he is perfectly sure, be subject to discount on the ground that the personal factor in the equation is not susceptible of elimination, he suggests merely that the views of other supposed authorities, whose responsibility is different but whose personal interest none the less, be weighed in the same balance.

As already suggested, it is more than likely that conditions heretofore complained of because of too much or too little regulation have gone to return no more. It is inevitable that government control on a military basis will develop benefits that the public will demand be made permanent and will reveal practices that the public will never countenance again. With competition for the first time in American history under the ban of the government, with combines of systems, pooling of traffic and earnings, and many practices heretofore outlawed invoked as the order of the day, the subject of regional commissions for railway regulation becomes so manifestly one susceptible only of speculation and conjecture as to justify leaving it with the reader of *The Annals* for such further consideration as his fancy may dictate.

## THE TOMORROW OF FINANCE

BY S. N. PATTEN

A man to whom I was quoting figures exclaimed: "I cannot think in terms of billions." This inability illustrates a defect in the popular thought. Men educated in a particular industry can think in its terms but they become lost when a national budget is presented. In most cases the situation is even worse for they think only in terms of a family budget. The majority of families have not even risen to this concept but merely spend when they can and seek credit for their deficit. It is no wonder that they become confused when the nation's budget is presented and even with the best intentions make serious mistakes when they undertake to handle government problems. Whether we will or no, the national budget is in terms of billions and solutions of national problems can be found only when a budgetary view of national affairs is adopted. Huge as the railroad problem is by itself, it cannot be settled apart from the other problems of national finance. Nor can we settle the food problem, the fuel problem or the shipping problem without a like reference to the related problems, each represented by its billions in national finance.

This popular confusion of thought is represented by the action of Congress which appropriates 20 billions for war purposes and authorizes only 4 billions of taxes. Revenue measures all have this same defect,—a lack of realization of the magnitude of the problems to be faced. It is easy to suggest means of raising 2 billions or even 4 billions of taxes. The proposer thinks he has done his duty by suggesting some small increase of taxation, forgetting that the deficit he leaves unprovided for will disorganize not only public credit but also private enterprise unless it is met in some adequate way. If private enterprise is not to be disorganized capital must be forthcoming regularly. The capital needs of the railroads have been forced upon our attention and must call for consideration under any system of government regulation, control or ownership. The problem of capital is but part of the larger problem of a national budget. Capital can come from two sources—profits or savings.



Latterly it has come from profits. In the tomorrow of finance it must come from savings. This is the issue that the railroads—indeed, all industry—must meet.

This brief introduction brings me to the heart of the problem and indicates the way the problems of national finance should be met. Our railroads, our food and our industry are parts of a national budget which we must visualize before any one issue can be adequately faced. The year 1914 was the last year of normal peace conditions. By contrasting the budget of this year with that of 1918 the exigencies of our present situation can be clearly seen.

## NATIONAL BUDGET

1914	Billions		1918	Billions
Total production	40	Total production	70	
Waste	10	Waste	18	
Earned income	10	Earned income	16	
Surplus	20	Increase of government expenditure	15	
Annual increase of capital	2	Increase of currency	3	
Annual increase of values	5	Excess of exports over imports	8	
Stock	12	from 1914 to 1918	8	
Ground rent	4	Decrease of stock	8	
Total bank deposits	18½	Decrease of industrial capital	2	
		Decrease of security values	10	
		Government bonds held by banks and other credit institutions	4	
		Total bank deposits	26½	

The year 1914 was a year of sound prosperity and of it the facts are well known. The basis of my budget is the income of that year which is usually placed at 30 billions. The addition I have made, which is the only unique feature of the table, is an endeavor to estimate the waste of the year. We overestimate the evils of economic stress if we do not show the economy which reduced income imposes. A war budget of 10 billions does not mean a like diminution in national welfare. The reduction of waste eases the situation and prevents acute suffering.

By waste I mean any loss of material which does not result in full production. If the material for three suits of clothes passes into the consumer's hands only as two suits, there is waste. If a hotel buys twice the quantity of food which the consumers get, there is

waste. So also is it waste if willing workers can find no employment or if they are prevented from working by unnecessary sickness. Add all these maladjustments together and the sum of annual waste becomes a striking magnitude. It is a modest statement to affirm that the production which does not reach the ultimate consumer plus the failure to produce which known methods could have prevented, amount to one-fourth the real production. Waste is not important in estimating the income of past years. It is significant only as it alters the pressure which a period of national stress imposes. Far more important is the estimate of the annual amount of earned income as contrasted with the surplus enjoyed. Here estimates are widely different, not because the facts are in question, but because of differences in opinion as to where various items should be placed. The ordinary business man reckons the surplus as the amount left when the year's expenses are paid. He thus regards it the same as the annual increase of security values which amount to five or six billions a year. A single taxer assumes it to be the same as the total amount of ground rent which is perhaps 4 billions a year. Capitalists regard their interest as an earned income and professional men likewise count their earning as a payment for their costs.

These estimates I have discarded as expressions of personal feeling which creates a bias in each group in favor of its own form of income. All the confusion about the distribution of wealth is involved in this discussion and all the uncertainty of its results. If the various claims were added they would not tally with the known national income but would greatly exceed it. The general result is the denial of the power of the government to make large expenditures. Each class wants its share exempted and what is left may suffice to meet the ordinary expenses of government but it is not enough to meet the expenditure of a great war. Can we meet the expenses agreed to by Congress for the year 1918? "No" must be the answer if these class estimates are accepted. Who has discovered how to raise more than four billions on the basis he accepts? It was impossible to raise the tax rates higher than they were placed, so great was the pressure from many groups each with its own special interests to guard.

The solution is not to accept any of these pleas but to base exemptions on vital needs measured objectively. The real surplus

is the difference between the amount produced and that needed to maintain the personal welfare of the population. We now have accurate measures of the demands for food, shelter and clothing. The figures show that they are from \$600 to \$800 a year, varying with the size of the city in which people live. But this \$800 for large cities represents food prices as paid in retail stores. There are profits to someone on these sales and on the house rents representing land values. Labor costs would thus be these prices minus the profits of storekeepers and landlords. A fair estimate of labor costs would be about \$500 a year per family or \$100 a year per person. A sum of 10 billion dollars a year is thus needed to support the population of 1914 at the prices then prevailing. What is not included in these costs is surplus. With it the people buy the comforts and luxuries they enjoy but which they could forego without physical detriment if a period of national stress demanded the sums thus expended for national purposes. We may therefore assume that in 1914, of the 30 billions of income, 10 billions was needed for the physical welfare of the people and that 20 billions was a surplus which might be diverted to national purposes without a lowering of the standard of life. No such sacrifice of comforts and luxuries has been demanded nor is it likely to be. It, however, represents what Germany is doing and why the German people have held out so long and so well. Such suffering as Germany has had to endure is not the result of the reduction of income which has been demanded but of wrong estimates made at the beginning of the war. The new view of food values was not accepted by the Germans at the beginning of the war. As a result they killed off their live stock too rapidly and could not replace it when they found their shortage was in fats and not in proteins. Such a mistake may be fatal to a blockaded nation like Germany but it does not affect America with its generous supply of all needed commodities. We could feed, clothe and house our people for \$100 per person. The rest is surplus on which the nation has a first claim.

Such are the problems of sustenance. The increase of prosperity on which the increase of surplus depends is largely a question of the increase of capital. A conservative estimate of this increase is 2 billion dollars a year. This means that production exceeds consumption by this amount. The sum, however, grows with every

improvement in the processes of production or in the utilization of the labor force. These improvements add about 200 million to the surplus each year and show our rate of annual progress. But far different from these estimates are those of the increase of values. The increase of values is the increase of security values determined by the market price of stocks and bonds. Of these prices, our knowledge is fairly complete and indicates an increase of values from 4 to 6 billions a year. The increase of security values is thus more than double the increase of capital as measured in stock and physical improvements. This is due to the low rate of interest which gives high security values. We have a nominal rate of interest (4 per cent) in which values are estimated when the real rate is nearer 8 per cent. So long as the two rates are so far apart, the rapid rise of security values is inevitable. The values thus made are not real but estimates based on the rate of interest. We are said to be worth 200 billions but a rise of the interest rate from 4 to 5 per cent would take a quarter from these estimates.

The budget of 1918 represents the conditions of January 1 and is therefore subject to change as the facts of the year become more fully known. The essential difference is due to the rise of prices. Of this, various estimates have been made varying from 60 to 100 per cent. The cost of living has risen 88.5 per cent according to the figures of the Federal Department of Labor. Agricultural produce of practically the same amounts valued at 10 billions in 1914 were valued at 21 billions at the close of 1917. It would seem therefore that an increase of 75 per cent was a conservative estimate and on this basis the money value of the national income would rise from 40 billions in 1914 to 70 billions in 1918. The figures I use for waste do not mean an increase in the amount wasted but in the value of what is wasted. Rises in wages are difficult to estimate as they are different in the various occupations. Unskilled labor has perhaps gained a net advantage through the rapid rise in its rate of payment but skilled labor and the lower range of salaries have gained but little. Between groups as varied as they are it is hard to strike an average. There can, however, be little doubt but that the workers and the salaried groups have as a whole suffered by the change. A rise of 60 per cent is probably an overestimate of the advantage they have received.

On this basis the money value of the national surplus would be

about 40 billion dollars of which the government takes 15 billion in taxes and bond issues. This would leave 5 billions still in the hands of producers as extra profits, an estimate which is probably below the actual figures.

Great inroads have also been made in the stock of goods, so great in fact as to change the surplus of 1914 in many cases into a deficit. This shortage we are beginning to feel and will feel more severely as the year progresses. The 12 billions of stock held in 1914 has been reduced to below 4 billions. My estimates are based on these facts. The excess of exports over imports for the three years from 1914 to 1917 inclusive was 8 billion dollars. In return for this we have received about 5 billions of American securities held abroad and 3 billions in cash. As there has been little or no reduction in the amount consumed, the condition of today differs from that of 1914 namely in the reduction of stock. Goods have gone out while securities and gold have flowed in.

In addition to this change there has been an actual loss of industrial capital. The railroads have not kept up their rolling stock, the evil effects of which we now keenly feel. Manufacturers have saved by using their machines and tools for a longer time and thus reduced current expenses at the expense of the future. Many factories have been transformed into military establishments which process reduces the industrial capital. Such a factory must be rated, not as it yields for war purposes, but as it will yield when it is again put to industrial uses. The income of war plants is not national income but a part of the expenses of war.

The loss in security values has also been equally severe. The amount of securities listed on markets are estimated at 40 billions and the average decline in value has been 25 per cent, thus making a loss of 10 billions in values to be added to the loss of 10 billions in goods. The amount of bank deposits were  $18\frac{1}{2}$  billions in 1914 and  $26\frac{1}{2}$  billions in 1917. This seems a gain but if the rise in values has been 75 per cent the deposits of 1917 would purchase 6 billions less goods than would the deposits of 1914 at the prices which now prevail. These all represent pre-war losses. Our war expenses come under another head. Of the bonds sold at least 4 billions were still in the hands of the banks or related institutions at the beginning of the year. The public have promised to take much of this, thus relieving the pressure on the banks, but it must be done by a con-

traction of expenditure on their part in the year 1918. It is a deficit weighing on national resources until these promises are fulfilled.

The equilibrium in terms of the budget of 1914 left a surplus of 2 billions for future investment. Given the same disposition to spend in 1918, an increased government expenditure of 15 billions would leave a deficit of 13 billion dollars. A new equilibrium thus demands a decrease of nearly a third in personal expenditure. There is little in the history of the last three years to show that measures thus far devised will produce the desired result. The year 1917 shows no net decrease in personal expenditure. Many have doubtless promised to save in the year 1918 but promises are valueless unless measures are devised to make them effective. Were the situation merely a result of the war, we might regard it abnormal and wait for peace to restore what the war has disturbed. There is, however, much evidence that the situation is the normal outcome of far-reaching changes which were manifest before the war but which have become active forces only under the pressure which the war has created. Had 10 billions of extra funds been demanded at any time in the last ten years, the same crisis in national finance would have occurred. The reason is that there has been a sharp increase in the urgency of consumption due to the cheapening of comforts and luxuries which thus produces an increased desire to spend. At the same time the increased security of salaried incomes has reduced the willingness to save. An annual expenditure in the form of life insurance will give a stability to family life which a real saving fails to secure. We have ceased to be a nation of savers and have become a nation of life insurers. This means security and increased happiness but it does not involve that rapid increase of capital which former methods encouraged. The low birth rate adds to the intensity of present expenditure and is probably its result rather than its cause. But it tends to an equilibrium between expenses and income which shuts out saving. There is still some saving among families whose incomes are under \$1,200 a year. The uncertainties of work, of health and of life keep active many of the older economy motives and make an annual surplus a necessity. But if the class whose incomes range from \$1,200 to \$4,000 were put in a group by themselves, they would probably owe society more than society owes them. They have ceased to own houses for

apartment life suits them better. They own automobiles, but they are in debt for them. They may go to high priced theaters less but they patronize motion pictures more. They are well housed, well clothed and enjoy summer vacations, but all these add to the urgency of present expenditure and leave less room for the saving by which capital is increased. If we add to this the rapid increase in display advertising and the growth of department stores we complete the picture of the growing power of expenditure over the saving instinct.

These facts are not war facts but a statement of tendencies clearly evident before the war came on. I have frequently called attention to them as a social change to which industry must adjust itself. The war has made a crisis in that it increases national expenditure without reducing the pressure of individual wants. The growing deficit of pre-war times becomes a startling fact when it is coupled with the present war expenses. I say pre-war deficit because the pressure of deficit would have been felt then if it had not been covered by the savings of the small class whose incomes exceed \$5,000 a year. Their profits have been high, leaving an excess for saving in the face of increased expenditure. The rich in this sense had probably a gross income of 10 billions before the war, of which they saved perhaps one-quarter. This would account for all the saving made at that time. If people with smaller incomes had no deficit they were fortunate. Certainly the class as a whole contributed a negligible sum to the national saving. Many complaints are made that all the increase of wealth goes to the rich, but with the lack of motive to save it is hardly possible that it would be otherwise. Only the prosperous have an income which exceeds their urgent wants. Families with medium income live as they go and the workers save only to meet the exigencies arising from sickness and non-employment.

I picture this pre-war situation so as to show the crisis the nation then faced. The period from 1900 to 1910 were flush years in which large profits were made. The industrial surplus was placed on the investment market and the rate of interest forced thereby to below 4 per cent. At the same time the sources of amusement and pleasure were vastly increased making a pressure for consumption by which the income of the average family was used up. The people thus ceased to save, but the loss of these savings was not felt



because of the vast surplus made in the newly enlarged industries. Capital thus ceased to be savings and became industrial profit. The low rate of interest forced up security values to such a degree that one dollar of real capital became two dollars of values in security. By 1910, the sources of the great surplus in the large industries were in a measure reduced and the supply of fresh capital fell off. A check on the increase of capital was thus created which could be met in only two ways. Either a higher rate of interest must be offered and popular saving evoked, or higher rates must be charged so that the industrial surplus would be sufficient to permit the proper increase of capital. If a higher rate of interest were offered security values would fall. A 5 per cent rate instead of 4 per cent would decrease security values by a quarter. Naturally this solution did not appeal to the nation's financiers. They chose the other plan of forcing up rates so that the increase of capital would come from the surplus thus acquired. This policy is apparent in the case of railroads whose values would be most affected by a rise in interest rate. Everyone is familiar with the struggle about rates between the Interstate Commerce Commission and the railroads. The rates were held down. The railroads refused to offer higher rates of interest, stopped making improvements and practically ceased to increase their rolling stock and other equipment. A crisis in railroad finance was thus approaching even if the war had not intervened. Low profits and a low rate of interest do not match. One or the other must yield. But the issue was put off by the war which has for the time brought high profits and has reversed the tendency for lower rates. The element desiring that capital be created out of profits is again supreme and will probably remain so while the war lasts. But the issue, although delayed, cannot be avoided. A system of finance that depends on profits to create new capital must move in one direction while a democracy must go in another. The increase of capital as well as the expense of the war must come from high profits or from popular economy. Of the former plan all are familiar since it is the method of finance on which recent prosperity has depended. With democratic finance we are less familiar and to use it would reverse many well-established financial maxims.

Every reduction of the interest rate adds to the value of what the prosperous have and creates a sharper gulf between them and the less fortunate classes. The less the rate the more difficult is the

advance from lower to higher social ranks. It may seem that a reduced rate is of popular advantage as when the mortgage rate of interest is lowered. But the advantage is to present holders only. They gain by an increase of values while to others the difficulty of acquiring farms grows. A low rate of interest means high farm values and a growth of tenant workers. It is hard to find a locality where the rate of interest has fallen below 6 per cent without breaking up the community life of farmers and substituting in their place a much lower class of tenant farmers. The problem is not solved, however, by dealing with a specific class no matter how important they are. The real problem is what motives can be placed around a people so they will do their own saving. A 4 per cent rate will not do this. There never has been in the past much popular saving below a 6 per cent rate but even this rate may fail under the new pressure for increased consumption. While the rate which will evoke sufficient popular saving cannot be stated, the general issue may be seen by contrasting the conditions of a farming community with a 4 and an 8 per cent rate of interest. An 80 acre farm with an 8 per cent rate would be worth \$4,000 (\$50 an acre) while with a 4 per cent rate it would be worth \$8,000 (\$100 an acre). If a working man can make a net saving of \$100 a year and he must pay one fourth of the purchase money to buy a farm, he can become a land owner in 8 years if the rate of interest is 8 per cent while it will take him 18 years to save enough to buy the farm if the rate is 4 per cent, thus making the selling price \$8,000 of which he must pay one-fourth down. It is easy to see that in the first case, workers will become landholders and the standards of the community will be maintained, while in the second case the long wait will lead to discouragement and to the migration of the better workers to some other occupation. There is no way in which a unified community standard can be upheld where such high values and low rates of interest persist. A social split is sure to occur dividing the community into a leisure class and a large mass of dependent workers. The same tendencies show themselves in industrial occupations although it is not so easy to contrast the motives which operate to discourage one class and to give advantage to the other. But democracy demands the same in both cases and the solution is not different. Suppressed motives must be evoked and the obstructions to social unification set aside.

To make the bearing of these statements plain it is necessary

to define more clearly the meaning of an economic democracy. An economic aristocracy is a society where the capitalists are a self-perpetuating class distinct from the workers both in occupation and in motive. Capital once saved is perpetuated and gives to its holder advantages denied to other classes. Low rates of interest with extraordinary inducements for individual enterprise are the basis of this condition. The high personal rewards give the basis of large fortunes and the low rates of interest stop the growth of competing capital. In contrast to these conditions a democratic economy is one in which privileges do not endure. All personal advantage is slowly reduced so that in time any family or class loses its industrial superiority and sinks back to the common level from which it must take a fresh start if its advantages are to be renewed. From shirt sleeve to shirt sleeve in three generations is an old adage which has a social significance if it means that the superior energy of one generation does not lift a family into a self-perpetuating leisure class. The adage implies that the descendants will be extravagant and thus lose their superiority. Socially, however, the advantage should not be lost in this way but by conditions which prevent the self-perpetuation of capital. This self-perpetuation is now favored because it is believed to be the only means by which an adequate supply of capital can be obtained. But the need of this perpetuation depends on the rate at which new capital is secured. Low rates of interest check the increase of new capital while high rates encourage it. The problem of democratic finance is to get a rate of interest which will produce a growth of new capital large enough to supply an increasing industry and to replace the decrease which is actually taking place in old capital. If, for example, old capital decreased at the rate of 2 per cent a year while an increase of 3 per cent a year was demanded to supply the increasing need of industry, the annual increase of new capital must be at least 5 per cent a year. If this condition were brought about, we would have democratic finance and the permanence of class distinctions would cease. Everyone would be permitted to gain whatever advantages his superior advantages permitted but what he left to his heirs would not be a self-perpetuating fund; it would be merely an annuity which would finally disappear.

The difficulty is not in preventing this self-perpetuation, but to secure the requisite capital to take its place. We now think of

capital as a permanent fund and do not realize how an industrial system could work without it. The advantage of capital now seems to lie in elevating one's family into the leisure class. A democratic view would not be this but the creation of a period of economic leisure for one's old age. We realize the advantage of limiting the hours of labor in each day, but we do not in a similar way see the advantage of limiting the years of labor. We stop work at 5 p.m. but we do not stop industrial activity at sixty. This lack of a social concept is largely due to the shortness of life in the past and to its uncertainty. Just as men were glad to get work they were glad to work until they dropped dead. The decrease of disease and the growth of sounder views of life permit us to think of a thirty-year working period as we now think of an eight-hour day. Should this view become prevalent a new attitude about saving would result. Men would save freely during their working period and spend freely in their old age. Their capital would become an annuity and not a permanent fund. Each generation would supply the capital for its successor who in turn would save for those which follow. A continuous destruction and replacement of capital would result with no permanent class enjoying its advantage. The old would lend to the young and the young would save for their old age leisure.

The longer life and the better living are now realities and will engage more attention no matter what financial system we use. The choice is between low rates of interest with a permanent leisure class and high rates with democratic saving by the whole population. The heredity of the upper and lower classes are not different. It is conditions which evoke saving habits and they may be made general by calling them into activity with the proper inducements. When a region is new and capital scarce, there is no difficulty to arouse the proper amount of saving. It is when the inducement fails because of low interest rates that the division into classes appears. If taxation had prevented this self-perpetuation of capital the general inclination to save would have continued and fresh capital would have appeared each year to replace that lost by taxation.

A democratic society must think more of its health, more of the length of life and more of leisure both in old age and from day to day. It must be a working organization active and efficient but it cannot afford to be 100 per cent efficient in work and only 20 per cent efficient in its amusement, recreation and leisure. Production

and consumption must complement each other and each bring its joys. Democracy is a many-sided life and not an alley leading to a single goal.

These statements I assume will be accepted in a vague way by most people who read them. We have become so used to the presentation of Utopias that we read of them with pleasure and forget them with equal readiness. It is only as they are transformed into facts that they become realities for the realization of which practical plans may be devised. I shall try to do this by presenting figures which show how the ends desired may be reached. We must begin this with a study of the prosperous for it is with changes in their attitudes that we are mainly concerned. We are as a class quite willing to lecture the workers but we do not take home the lessons taught. Many budgets have been presented of workers and we know fairly well of the merits and defects of their expenditure. We lack a like picture of the upper middle class whose expenditures are more than any other factor the cause of the present situation and the obstacle to its improvement. I shall present not the usual budget of the workers which visualizes the minimum of necessities needed by working families, but a budget of those whose expenditures represent the lower limit of good living. These "good livers" represent the tendencies of the prosperous and the pressure to spend forced on them by the social life they enjoy. In the cost of an automobile I have included depreciation charges. A \$1,200 automobile run by the owner will cost him \$300 a year on this basis. The rule for wise insurance is that the income to be derived from it should equal half the family income.

#### THE MINIMUM OF GOOD LIVING

##### ANNUAL BUDGET

Rent.....	\$300	Summer expenses.....	300
Automobile.....	300	Amusement.....	200
Service.....	300	Generosity.....	200
Clothing.....	300	Taxes.....	100
Food.....	600	Extras.....	200
Household expenses.....	100		
Insurance.....	600	Total.....	\$4,000

The defect in this budget is not from the personal but from the social viewpoint. The comforts of life are provided for but there is no pressure to encourage thrift. Such a standard is therefore in-

complete and undemocratic. It is incomplete in that the thrift instinct must be aroused to make a normal man. A thriftless man is as liable to degeneration as is a man who does not work. Such families, however pleasant and wholesome, sink in intelligence and vital power. They are also undemocratic because if they do not save there must be a capitalistic class to perform this function, and back of them, a predatory class to amass the fortunes which the capitalist class inherit. Only when energy and thrift are combined and simultaneously evoked, will a democratic family appear which is thus independent and self-determining. To bring this about a thrift item must be added to their budget and thrift motives evoked by a sufficing rate of interest.

The working epoch of each man should be followed by a period of leisure in old age. During the working period he saves, in old age he spends. What sum of annual saving will give a thirty-year period of work and saving coupled with a period of twenty years' leisure in old age? If the sum of this saving sufficed to keep up the capital of the country there would then be a replacing capital instead of the permanent fund now sought. There could then be fresh capital saved each generation to replace the spending of their predecessors of the past generation. Capital in one sense would be permanent for enough would always be at hand, but it would be temporary in the sense that the capital of each generation would go as they go. To bring this about would demand an annual saving of \$400 a year if the rate of interest remained at 4 per cent while an annual saving of \$200 a year would suffice if the rate of interest was 8 per cent. It is plain that \$400 a year of saving would exceed present possibilities while a saving of \$200 a year is practicable. If the actual return on capital is now 8 per cent there is no external obstacle to an unified democratic society. It is the thrift-pressure which we need and this cannot be evoked while the rate of interest remains at 4 per cent.

Such a picture the reader may regard as picturesque if he will. It is not this which I have primarily in mind but to show the dilemma in which the nation is at the present time. We have had in the past a society more or less predatory in its nature. The gains of the few were at the expense of the many and out of these gains came the capital of the nation. The "good liver" is an adjunct and completed product of this epoch. But against this régime the people

have of late revolted and pressure has been put in ways which have reduced profits. However, capital came from these high profits and with their reduction comes a failure to supply the capital needed for industrial enterprise. This restrictive economy is thus bound to fail. The check to the increase of capital must be obviated either by a return to the epoch of high individual profit or by pushing on to a more democratic society in which the people do their own saving. Such a choice the American people face and to which they will turn I cannot say. But I can say that a policy of restriction will not work. I can also say that a more fully democratic society is a practical expedient if the mental attitude of the people is altered to meet the new situation. The struggle of coming years is thus not a struggle with nature but a struggle of conflicting motives. Our democratic ideals may become real forces, or a keen desire for good living may keep active the forces on which our social class distinctions depend.



# DOCUMENTS AND STATISTICS PERTINENT TO CURRENT RAILROAD PROBLEMS

COMPILED BY C. H. CRENNAN,

Assistant Professor of Economics, University of Pennsylvania,

AND

W. E. WARRINGTON,

Instructor in Commerce and Transportation, University of Pennsylvania

## I

### POSSESSION AND CONTROL OF RAIL AND WATER TRANSPORTATION SYSTEMS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

#### A PROCLAMATION

**W**HEREAS the Congress of the United States, in the exercise of the constitutional authority vested in them, by joint resolution of the Senate and House of Representatives, bearing date April 6, 1917, resolved:

That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

And by joint resolution bearing date of December 7, 1917, resolved:

That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Governments and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination, all the resources of the country are hereby pledged by the Congress of the United States.

And whereas it is provided by section 1 of the Act approved August 29, 1916, entitled "An Act making appropriations for the support of the Army for the fiscal year ending June 30, 1917, and for other purposes," as follows:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

And whereas it has now become necessary in the national defense to take possession and assume control of certain systems of transportation and to utilize the same, to the exclusion as far as may be necessary of other than war traffic thereon, for the transportation of troops, war material and equipment therefor, and for other needful and desirable purposes connected with the prosecution of the war;

NOW, THEREFORE, I, WOODROW WILSON, President of the United States, under and by virtue of the powers vested in me by the foregoing resolutions and statute, and by virtue of all other powers thereto me enabling, do hereby, through Newton D. Baker, Secretary of War, take possession and assume control at 12 o'clock noon on the twenty-eighth day of December, 1917, of each and every system of transportation and the appurtenances thereof located wholly or in part, within the boundaries of the continental United States and consisting of railroads, and owned or controlled systems of coastwise and inland transportation, engaged in general transportation, whether operated by steam or by electric power, including also terminals, terminal companies and terminal associations, sleeping and parlor cars, private cars and private car lines, elevators, warehouses, telegraph and telephone lines and all other equipment and appurtenances commonly used upon or operated as a part of such rail or combined rail and water systems of transportation;—to the end that such systems of transportation be utilized for the transfer and transportation of troops, war material and equipment, to the exclusion so far as may be necessary of all other traffic thereon; and that so far as such exclusive use be not necessary or desirable, such systems of transportation be operated and utilized in the performance of such other services as the national interest may require and of the usual and ordinary business and duties of common carriers.

It is hereby directed that the possession, control, operation and utilization of such transportation systems hereby by me undertaken shall be exercised by and through William G. McAdoo, who is hereby appointed and designated Director General of Railroads. Said Director may perform the duties imposed upon him, so long and to such extent as he shall determine, through the Boards of Directors, Receivers, officers and employees of said systems of transportation. Until and except so far as said Director shall from time to time by general or special orders otherwise provide, the Boards of Directors, Receivers, officers and employees of the various transportation systems shall continue the operation thereof in the usual and ordinary course of the business of common carriers, in the names of their respective companies.

Until and except so far as said Director shall from time to time otherwise by general or special orders determine, such systems of transportation shall remain subject to all existing statutes and orders of the Interstate Commerce Commission, and to all statutes and orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But any orders, general or special, hereafter made by said Director, shall have paramount authority and be obeyed as such.

Nothing herein shall be construed as now affecting the possession, operation and control of street electric passenger railways, including railways commonly called interurbans, whether such railways be or be not owned or controlled by such railroad companies or systems. By subsequent order and proclamation, if

and when it shall be found necessary or desirable, possession, control or operation may be taken of all or any part of such street railway systems, including subways and tunnels; and by subsequent order and proclamation possession, control and operation in whole or in part may also be relinquished to the owners thereof of any part of the railroad systems or rail and water systems, possession and control of which are hereby assumed.

The Director shall as soon as may be after having assumed such possession and control enter upon negotiations with the several companies looking to agreements for just and reasonable compensation for the possession, use and control of their respective properties on the basis of an annual guaranteed compensation, above accruing depreciation and the maintenance of their properties, equivalent, as nearly as may be, to the average of the net operating income thereof for the three year period ending June 30, 1917,—the results of such negotiations to be reported to me for such action as may be appropriate and lawful.

But nothing herein contained, expressed or implied, or hereafter done or suffered hereunder, shall be deemed in any way to impair the rights of the stockholders, bondholders, creditors and other persons having interests in said systems of transportation or in the profits thereof, to receive just and adequate compensation for the use and control and operation of their property hereby assumed.

Regular dividends hitherto declared, and maturing interest upon bonds, debentures and other obligations, may be paid in due course; and such regular dividends and interest may continue to be paid until and unless the said Director shall from time to time otherwise by general or special orders determine; and, subject to the approval of the Director, the various carriers may agree upon and arrange for the renewal and extension of maturing obligations.

Except with the prior written assent of said Director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carrier; but suits may be brought by and against said carriers and judgments rendered as hitherto until and except so far as said Director may, by general or special orders, otherwise determine.

From and after twelve o'clock on said twenty-eighth day of December, 1917, all transportation systems included in this order and proclamation shall conclusively be deemed within the possession and control of said Director without further act or notice. But for the purpose of accounting said possession and control shall date from twelve o'clock midnight on December 31, 1917.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE by the President, through Newton D. Baker, Secretary of War,  
in the District of Columbia, this 26th day of December, in the year of  
[SEAL.] our Lord one thousand nine hundred and seventeen, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON

By the President:

ROBERT LANSING,  
*Secretary of State.*

NEWTON D. BAKER,  
*Secretary of War.*

## II

THE PRESIDENT'S ADDRESS TO CONGRESS ON FEDERAL  
CONTROL OF RAILROADS, JANUARY 4, 1918

*Gentlemen of the Congress:*

I have asked the privilege of addressing you in order to report that on the 20th of December last, during the recess of Congress, acting through the Secretary of War and under the authority conferred upon me by the act of Congress approved August 29, 1916, I took possession and assumed control of the railway lines of the country and the systems of water transportation under their control. This step seemed to be imperatively necessary in the interest of public welfare, in the presence of the great tasks of war with which we are now dealing. As our experience develops difficulties and makes it clear what they are, I have deemed it my duty to remove those difficulties wherever I have the legal power to do so. In assuming control of the vast railway systems of the country is, I realize, a very great responsibility, but to fail to do so in the existing circumstances would have been a much greater. I assumed the lesser responsibility rather than the weightier.

I am sure that I am speaking the mind of all thoughtful Americans when I say that it is our duty as the representatives of the nation to do everything that is necessary to do to secure the complete mobilization of the whole resources of America by as rapid and effective a means as can be found. Transportation supplies all the arteries of mobilization. Unless it be under a single and unified direction, the whole process of the nation's action is embarrassed.

It was in the true spirit of America, and it was right, that we should first try to effect the necessary unification under the voluntary action of those who were in charge of the great railway properties; and we did try it. The directors of the railways responded to the need promptly and generously. The group of railway executives who were charged with the task of actual coordination and general direction performed their duties with patriotic zeal and marked ability, as was to have been expected, and did, I believe, everything that it was possible for them to do under the circumstances. If I have taken the task out of their hands, it has not been because of any dereliction or failure on their part, but only because there were some things which the government can do and private management cannot. We shall continue to value most highly the advice and assistance of these gentlemen, and I am sure we shall not find them withholding it.

It had become unmistakably plain that only under government administration can the entire equipment of the several systems of transportation be fully and unreservedly thrown into a common service without injurious discrimination against particular properties. Only under government administration can an absolutely unrestricted and unembarrassed common use be made of all tracks, terminals, terminal facilities and equipment of every kind. Only under that authority can new terminals be constructed and developed without regard to the requirements or limitations of particular roads. But under government administration all these things will be possible, not instantly, but as fast as practical difficulties, which cannot be merely conjured away, give way before the new management.

The common administration will be carried out with as little disturbance

of the present operating organizations and personnel of railways as possible. Nothing will be altered or disturbed which it is not necessary to disturb. We are serving the public interest and safeguarding the public safety, but we are also regardless of the interest of those by whom these great properties are owned and glad to avail ourselves of the experience and trained ability of those who have been managing them.

It is necessary that the transportation of troops and of war materials, of food and of fuel, and of everything that is necessary for the full mobilization of the energies and resources of the country, should be first considered, but it is clearly in the public interest also that the ordinary activities and the normal industrial and commercial life of the country should be interfered with and dislocated as little as possible, and the public may rest assured that the interest and convenience of the private shipper will be as carefully served and safeguarded as it is possible to serve and safeguard it in the present extraordinary circumstances.

While the present authority of the executive suffices for all purposes of administration, and while, of course, all private interests must for the present give way to the public necessity, it is, I am sure you will agree with me, right and necessary that the owners and creditors of the railways, the holders of their stocks and bonds, should receive from the government an unqualified guarantee that their properties will be maintained throughout the period of federal control in as good repair and as complete equipment as at present, and that the several roads will receive under federal management such compensation as is equitable and just alike to their owners and to the general public. I would suggest the average net railway operating income of the three years ending June 30, 1917. I earnestly recommend that these guarantees be given by appropriate legislation and given as promptly as circumstances permit.

I need not point out the essential justice of such guarantees and their great influence and significance as elements in the present financial and industrial situation of the country. Indeed, one of the strong arguments for assuming control of the railroads at this time is the financial argument.

It is necessary that the values of railway securities should be justly and fairly protected, and that the large financial operations every year necessary in connection with the maintenance, operation and development of the roads should, during the period of the war, be wisely related to the financial operations of the government. Our first duty is, of course, to conserve the common interest and the common safety and to make certain that nothing stands in the way of the successful prosecution of the great war for liberty and justice, but it is an obligation of public conscience and of public honor that the private interests we disturb should be kept safe from unjust injury, and it is of the utmost consequence to the government itself that all great financial operations should be stabilized and coördinated with the financial operations of the government.

No borrowing should run athwart the borrowings of the federal treasury, and no fundamental industrial values should anywhere be unnecessarily impaired. In the hands of many thousands of small investors in the country, as well as in national banks, in insurance companies, in savings banks, in trust companies, in financial agencies of every kind, railway securities, the sum total of which runs up

to some ten or eleven thousand millions, constitute a vital part of the structure of credit, and the unquestioned solidity of that structure must be maintained.

The Secretary of War and I easily agreed that, in view of the many complex interests which must be safeguarded and harmonized, as well as because of his exceptional experience and ability in this new field of governmental action, the Hon. William G. McAdoo was the right man to assume direct administrative control of this new executive task. At our request, he consented to assume the authority and duties of organizer and director general of the new railway administration. He has assumed those duties and his work is in active progress.

It is probably too much to expect that even under the unified railway administration which will now be possible sufficient economies can be effected in the operation of the railways to make it possible to add to their equipment and extend their operative facilities as much as the present extraordinary demands upon their use will render desirable without resorting to the national treasury for the funds. If it is not possible, it will, of course, be necessary to resort to the Congress for grants of money for that purpose.

The Secretary of the Treasury will advise with your committees with regard to this very practical aspect of the matter. For the present, I suggest only the guarantees I have indicated and such appropriations as are necessary at the outset of this task. I take the liberty of expressing the hope that the Congress may grant these promptly and ungrudgingly. We are dealing with great matters and will, I am sure, deal with them greatly.

### III

#### OFFICIAL ORDERS OF DIRECTOR GENERAL McADOO<sup>1</sup>

##### ORDER No. 1

December 29, 1917.

Pursuant to the order of the President of the United States, through the Secretary of War, the undersigned, as Director General of Railroads, has taken possession and assumed control of certain transportation systems described in the Proclamation of the President, of which Proclamation and Order officers, agents and employes of said transportation systems are to take immediate and careful notice. In addition to the provisions therein contained, it is,

##### *Until Further Order, Directed That:*

1. All officers, agents and employes of such transportation systems may continue in the performance of their present regular duties, reporting to the same officers as heretofore and on the same terms of employment.
2. Any officer, agent or employe desiring to retire from his employment shall give the usual and seasonable notice to the proper officer to the end that there may be no interruption or impairment of the transportation service required for the successful conduct of the war and the needs of general commerce.

<sup>1</sup> Official orders issued by the Director General of Railroads up to the time this volume went to press.

3. All transportation systems covered by said Proclamation and Order shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

4. The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may thus be promoted.

5. Traffic agreements between carriers must not be permitted to interfere with expeditious movements.

6. Through routes which have not heretofore been established because of short hauling or other causes, are to be established and used whenever expedition and efficiency of traffic will thereby be promoted; and if difficulty is experienced in such through routing, notice thereof shall by carriers or shippers or both be given at once to the Director by wire.

7. Existing schedules of rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules of rates or orders as may hereafter be found to conflict with the purposes of said Proclamation or with this order shall be brought immediately by wire to the attention of the Director.

#### GENERAL ORDER No. 2

##### *To the Chief Executives of the Railroads:*

Pursuant to the authority vested in me by the President of the United States in his proclamation of December 26, 1917, wherein it was stated that for purposes of accounting, possession and control of the railroads shall date from 12 o'clock midnight on December 31, 1917, you are notified that, until otherwise directed, no changes in the present methods of accounting as prescribed by the Interstate Commerce Commission will be required. The accounts of your respective companies shall be closed as of December 31, 1917, and opened as of January 1, 1918, in the same manner as they have heretofore been handled at the close of one fiscal period and the beginning of another; and in the same manner that you should have handled your accounts had the government not taken possession and control

#### ORDER No. 3

All carriers by railroad, subject to the jurisdiction of the undersigned, are hereby ordered and directed forthwith to publish and file, and to continue in effect until further order, tariffs effective January 21, 1918, wherein demurrage rules, regulations and charges shall be changed so as to provide.

A. (1) Forty-eight hours' (two days) free time for loading or unloading on all commodities.

(2) Twenty-four hours' (one day) free time on cars held for any other purpose permitted by tariff.

B. Demurrage charges per car per day or fraction of a day until car is released, as follows: \$3.00 for the first day, \$4.00 for the second day, and for each succeeding additional day the charge to be increased \$1.00 in excess of that for the preceding day until a maximum charge of \$10.00 per car per day shall be reached



on the eighth day of detention beyond free time, the charge thereafter to be \$10.00 per car per day or fraction thereof. These charges will supersede all those named in existing tariffs applicable to domestic freight, and specifically contemplate the cancellation of all average agreement provisions of existing tariffs.

No change is authorized hereby to be made in demurrage rules, regulations and charges applying on foreign export freight awaiting ships at export points.

Upon my request, the Interstate Commerce Commission has issued Fifteenth Section Order No. 225<sup>1</sup> authorizing the filing of tariffs to accord with this order to become effective January 21, 1918, on one day's notice.

Carriers shall immediately file said tariffs with appropriate state commissions or other state authorities.

Dated at Washington, this fifth day of January, 1918.

**\* FIFTEENTH SECTION ORDER NO. 225**

At a Session of Division 2 of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 5th day of January, A. D. 1918.

ROGER E. CLARK,  
WALTER M. DANIELS, } Commissioners.  
ROBERT W. WOOLLEY,

Application under Section 15 of the Act to Regulate Commerce, as amended August 9, 1917, for approval for filing of an increased rate, fare, charge, or classification.

*Demurrage Rules, Regulations and Charges*

The Director General of Railroads having requested the Commission's approval for filing tariffs containing changes in demurrage rules, regulations and charges in compliance with his order No. 3 of January 5, 1918, effective January 21, 1918, so as to provide as follows:

"A. (1) Forty-eight hours' (two days) free time for loading or unloading on all commodities.

(2) Twenty-four hours' (one-day) free time on cars held for any other purpose permitted by tariff.

B. Demurrage charges per car per day or fraction of a day until car is released, as follows: \$3.00 for the first day, \$4.00 for the second day, and for each succeeding additional day the charge to be increased \$1.00 in excess of that for the preceding day until a maximum charge of \$10.00 per car per day shall be reached on the eighth day of detention beyond free time, the charge thereafter to be \$10.00 per car per day or fraction thereof. These charges will supersede all those named in existing tariffs applicable to domestic freight, and specifically contemplate the cancellation of all average agreement provisions of existing tariffs.

No change is authorized hereby to be made in demurrage rules, regulations and charges applying on foreign export freight awaiting ships at export points."

It is ordered, That the rules, regulations and charges herein above set forth be, and they are hereby, approved for filing, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto:

It is further ordered, That said tariffs may be filed, effective January 21st, 1918, upon not less than one (1) day's notice to the Commission and to the general public in the manner prescribed in Section 6 of the Act to Regulate Commerce:

And it is further ordered, That the tariffs filed under authority of this order shall bear on title pages thereof the following notation:

Increased demurrage rules, regulations and charges in this tariff are filed on one day's notice under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 225 of January 5, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

By the Commission, Division 2:

[SEAL]

GEORGE B. MCGINTY,  
Secretary.

## GENERAL ORDER No. 4

January 18, 1918.

For purposes of operation the railroads of the United States will be classified as Eastern Railroads, Southern Railroads and Western Railroads, defined as follows:

*Eastern Railroads*—The railroads in that portion of the United States north of the Ohio and Potomac rivers and east of Lake Michigan and the Indiana-Illinois state lines; also those railroads in Illinois extending into that state from points east of the Indiana-Illinois state line; also the Chesapeake & Ohio, the Norfolk & Western and the Virginian railways.

*Southern Railroads*—All railroads in that portion of the United States south of the Ohio and Potomac rivers and east of the Mississippi River, except the Chesapeake & Ohio, Norfolk & Western and the Virginian railways; and also those railroads in Illinois and Indiana extending into those states from points south of the Ohio River.

*Western Railroads*—All railroads not included in the above definitions and, broadly speaking, all railroads in the territory west of Lake Michigan and of the Indiana-Illinois state line to the Ohio River and west of the Mississippi River from the Ohio River to the Gulf of Mexico, excepting those railroads in Illinois included in Eastern Territory, and those railroads in Illinois and Indiana included in Southern Territory, as above stated.

Mr. A. H. Smith, President of the New York Central, is appointed Regional Director, with office at New York, in charge of the operation of Eastern Railroads.

Mr. C. H. Markham, President of the Illinois Central, is appointed Regional Director, with office at Atlanta, in charge of the operation of Southern Railroads.

Mr. R. H. Aishton, President of the Chicago & North Western, is appointed Regional Director, with office at Chicago, in charge of the operation of Western Railroads.

Orders issued by the gentlemen named in their capacity as Regional Directors will be issued by authority of the Director General and will be respected accordingly.

## GENERAL ORDER No. 5

Pursuant to the authority vested in me as Director General of Railroads by the President of the United States in his proclamation of December 26, 1917, I hereby create a Railroad Wage Commission and name as the members thereof, Franklin K. Lane, Secretary of the Interior; Charles C. McChord, member of the Interstate Commerce Commission; J. Harry Covington, Chief Justice of the Supreme Court of the District of Columbia and William R. Willcox of New York.

*It is Ordered and Directed that:*

The Commission shall make a general investigation of the compensation of persons in the railroad service, the relation of railroad wages to wages in other industries, the conditions respecting wages in different parts of the country, the special emergency respecting wages which exists at this time owing to war conditions and the high cost of living, as well as the relation between different classes of railroad labor.

The Commission shall begin its labors at once, and make report to the Director General, giving its recommendations in general terms as to changes in existing compensations that should be made.

Officers, agents and employes of the railroads are directed to furnish to the Railroad Wage Commission upon request all information it may require in the course of its investigations.

GENERAL ORDER No. 6\*

January 28, 1918.

*To Officers and Directors of Railroad Companies:*

During the period of possession, operation, and government control of railroads, it is necessary that officers, directors, and agents of railroad companies be very careful in the handling of moneys and in the dealing with transportation matters. Without attempting at this time to give general directions, there are a few matters involving the expenditure of moneys for purposes having no direct relation to transportation, which should receive immediate attention; as well as the issuance of free transportation.

It is therefore ordered that the carriers' operating revenues shall not be expended:

1. For the payment of agents or other persons who are employed in any way to affect legislation.
2. For the employment of attorneys who are not actually engaged in the performance of necessary legal work for the company.
3. For the payment of the expenses of persons or agencies constituting associations of carriers unless such association is approved in advance by the Director General.
4. For any political purpose or to directly or indirectly influence the election of any person or an election affecting any public measure.

*Issuance of Free Passes*

No passes or free transportation shall be issued by any carrier under federal control or any official of such carrier unless the issuance of such free transportation is expressly authorized by the Act of Congress entitled "An Act to Regulate Commerce, Approved February 4, 1887, and Amendments thereto"; and any such passes or free transportation heretofore issued not in conformity with said act must be recalled.

This order applies to all carriers under federal control, whether interstate or intrastate.

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\*Note—Since this volume went to press, Order No. 7 and Fifteenth Section Order No. 300, in re National and Car Demurrage Rules, Regulations and Charges have been issued. Copies of these orders may be secured from the office of the Director General of Railroads, Washington, D. C., upon application.

## IV

## RAILROAD STATISTICS

These statistics, not generally accessible, are offered for two purposes:

(1) To afford a basis for an understanding of the task confronting the Director General.

(2) To enable the reader to picture for himself something of the change in the railroad situation which has taken place during the war period. (Wherever possible official figures are given for the fiscal years 1914-15-16; analysis of operating income covers the period 1891-1917 inclusive.)

For a clear understanding of the tables, terms frequently appearing should be defined. As designated by the Interstate Commerce Commission, Class I roads are those having annual operating revenues above \$1,000,000; Class II roads are those having annual operating revenues from \$100,000 to \$1,000,000; and Class III roads are those having annual operating revenues below \$100,000. Each reporting carrier is assigned to that district in which the major part of its operations lies or with which it seems most closely allied in character, and no arbitrary subdivisions or apportionments are made of the returns of any carrier. The three districts may be defined substantially as follows: The Eastern District comprises that portion of the United States bounded on the west by the northern and western shore of Lake Michigan to Chicago, thence by a line to Peoria, thence to East St. Louis, thence down the Mississippi River to the mouth of the Ohio River, and on the south by the Ohio River from its mouth to Parkersburg, W. Va.; thence by a line to the southwestern corner of Maryland; thence by the Potomac River to its mouth. The Southern District comprises that portion of the United States bounded on the north by the Eastern District and on the west by the Mississippi River. The remainder of the United States, exclusive of Alaska and of island possessions, is included in the Western District.<sup>1</sup>

The statistical bibliography appended will make available further sources of information necessary for a complete picture of the railroads of the United States.

<sup>1</sup> Statistics of Railways in the United States 1914, Interstate Commerce Commission, p. 10.

TABLE 1. NUMBER OF RAILROADS IN THE UNITED STATES IN 1914 CLASSIFIED  
ACCORDING TO ORGANIZATION FOR OPERATION\*

Class	Number
Operating roads:	
Independent.....	818
Subsidiary.....	
Fixed rent.....	6
Contingent rent.....	1
Other relation.....	287
No information.....	...
Private.....	185
Total operating roads.....	<u>1,297</u>
Non-operating roads:	
Subsidiary.....	
Fixed rent.....	323
Contingent rent.....	107
Other relation.....	273
No information.....	...
Private.....	21
"Line owned" not in operation.....	
Independent.....	64
Subsidiary.....	4
Private.....	16
Total non-operating roads.....	<u>808</u>
Total number of roads.....	<u>2,105</u>

\* Latest official figures available. Statistics of Railways in the U. S. 1914, I. C. C., p. 18. Does not include roads classified as switching and terminal.

TABLE 2. MILES OF RAILWAY TRACKS ON JUNE 30, 1914, COVERED BY REPORTS OF OPERATIONS\*

Class of roads and territory covered	Single (or first) track	Second track	Third track	Fourth track, etc.	Yard track and sidings	Total mileage operated (all tracks)
<b>Class I roads:</b>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>
Eastern District.....	<sup>1</sup> 53,666.64	<sup>2</sup> 16,161.10	2,414.82	1,770.04	<sup>3</sup> 38,461.37	<sup>4</sup> 117,473.97
Southern District.....	42,055.36	3,142.99	43.70	157.08	14,846.61	60,345.74
Western District.....	<sup>5</sup> 126,277.20	<sup>6</sup> 8,074.95	231.94	143.71	<sup>7</sup> 40,086.19	<sup>8</sup> 174,813.99
Total.....	<sup>9</sup> 226,999.20	<sup>10</sup> 27,379.04	2,690.46	2,070.83	<sup>11</sup> 93,394.17	<sup>12</sup> 352,533.70
<b>Class II roads:</b>						
Eastern District.....	4,421.58	202.19	5.57	.62	1,333.41	6,963.37
Southern District.....	4,711.12	3.02			648.10	5,363.24
Western District.....	11,265.69	19.87			1,957.58	13,243.14
Total.....	20,398.39	225.08	5.57	.62	3,939.09	24,568.75
<b>Class III roads:</b>						
Eastern District.....	1,852.81	.48			264.56	2,117.85
Southern District.....	2,903.91	3.40			234.31	3,141.62
Western District.....	4,392.79	.66			452.94	4,846.39
Total.....	9,149.51	4.54			951.81	10,105.86
<b>All operating roads:</b>						
Eastern District.....	<sup>1</sup> 64,941.03	<sup>2</sup> 6,363.77	2,420.39	1,770.66	<sup>3</sup> 40,059.34	<sup>4</sup> 125,555.19
Southern District.....	49,670.39	3,149.41	43.70	157.08	15,729.02	68,749.60
Western District.....	<sup>5</sup> 141,935.68	<sup>6</sup> 8,095.48	231.94	143.71	<sup>7</sup> 42,496.71	<sup>8</sup> 192,903.52
United States, 1914 ...	<sup>9</sup> 256,547.10	<sup>10</sup> 27,608.66	2,696.03	2,071.45	<sup>11</sup> 98,285.07	<sup>12</sup> 387,208.31

\* Does not include mileage of switching and terminal companies.

<sup>1</sup> Includes 1,299.10 miles lying in Canada.

<sup>2</sup> Includes 480.24 miles lying in Canada.

<sup>3</sup> Includes 495.45 miles lying in Canada.

<sup>4</sup> Includes 2,184.79 miles lying in Canada.

<sup>5</sup> Includes 731.53 miles lying in Canada

and 51.67 miles lying in Mexico.

<sup>6</sup> Includes 7.12 miles lying in Canada.

<sup>7</sup> Includes 106.89 miles lying in Canada and 11.22 miles lying in Mexico.

<sup>8</sup> Includes 845.54 miles lying in Canada and 62.89 miles lying in Mexico.

<sup>9</sup> Includes 1,940.63 miles lying in Canada, and 51.67 miles lying in Mexico.

<sup>10</sup> Includes 487.36 miles lying in Canada.

<sup>11</sup> Includes 602.34 miles lying in Canada and 11.22 miles lying in Mexico.

<sup>12</sup> Includes 3,030.33 miles lying in Canada and 62.89 miles lying in Mexico.

Twenty-seventh Annual Report on the Statistics of Railways in the United States for the year ended June 30, 1914, p. 13.

TABLE 2, (continued) MILES OF RAILWAY TRACKS ON JUNE 30, 1915, COVERED BY REPORTS OF OPERATIONS\*

Class of carriers and territory covered	Road	Second main track	Third main track	All other main tracks	Yard track and sidings	Total all tracks
<b>Class I carriers:</b>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>	<i>Miles</i>
Eastern District.....	38,911.63	16,442.92	2,408.17	1,769.55	38,966.34	118,696.81
Southern District.....	42,186.41	3,446.66	42.76	244.81	15,103.56	61,024.24
Western District.....	127,909.00	8,554.66	261.42	267.86	41,024.66	177,999.61
<b>Total.....</b>	<b>229,007.03</b>	<b>28,444.28</b>	<b>2,709.35</b>	<b>2,282.22</b>	<b>95,094.78</b>	<b>357,519.64</b>
<b>Class II carriers:</b>						
Eastern District.....	4,420.91	170.72	4.95		1,296.24	5,991.92
Southern District.....	4,643.50	4.34			714.63	5,362.56
Western District.....	10,361.03	20.54		20.84	1,890.37	12,293.68
<b>Total.....</b>	<b>19,425.53</b>	<b>195.60</b>	<b>4.95</b>	<b>20.84</b>	<b>3,901.24</b>	<b>23,748.16</b>
<b>Class III carriers:</b>						
Eastern District.....	1,778.06	.73			274.37	2,053.06
Southern District.....	2,964.33	3.40			206.54	3,076.27
Western District.....	4,312.37	.66			431.33	4,744.36
<b>Total.....</b>	<b>8,964.76</b>	<b>4.79</b>			<b>912.14</b>	<b>9,873.69</b>
<b>Classes I, II, and III carriers:</b>						
Eastern District.....	68,109.70	16,614.37	2,410.12	1,769.55	40,537.05	126,440.79
Southern District.....	49,894.33	3,454.42	42.76	244.81	16,026.75	69,663.07
Western District.....	142,565.29	8,575.88	261.42	288.70	43,346.36	195,037.65
<b>United States, 1915...</b>	<b>257,569.33</b>	<b>28,644.67</b>	<b>2,714.30</b>	<b>2,303.06</b>	<b>90,910.16</b>	<b>391,141.51</b>
United States, 1914...	286,517.10	27,609.66	2,696.03	2,071.45	98,285.07	387,208.31
United States, 1913...	253,470.20	26,373.79	2,588.68	1,964.06	95,211.41	379,508.14
United States, 1912...	249,852.06	24,951.65	2,511.76	1,903.32	92,019.13	371,237.92
United States, 1911...	246,238.02	23,451.26	2,414.16	1,747.10	88,973.95	362,824.49
United States, 1910...	240,530.75	21,658.74	2,206.39	1,488.78	85,581.93	351,766.59
United States, 1909...	235,402.09	20,949.41	2,169.55	1,453.56	82,376.63	342,351.24
United States, 1908...	230,494.02	20,209.05	2,081.16	1,408.99	79,452.64	333,645.86

\* Does not include mileage of switching and terminal companies (1,937.69 miles, main track, and 2,418.61 miles, yard track and sidings, etc.).

<sup>1</sup> Includes 1,155.44 miles in Canada.

<sup>2</sup> Includes 756.89 miles in Canada and 51.67 miles in Mexico.

<sup>3</sup> Includes 1,912.23 miles in Canada, and 51.67 miles in Mexico.

<sup>4</sup> Includes 84.92 miles in Canada.

<sup>5</sup> Includes 1,310.36 miles in Canada.

<sup>6</sup> Includes 1,667.35 miles in Canada, and 51.67 miles in Mexico.

<sup>7</sup> Includes 1,940.63 miles in Canada, and 51.67 miles in Mexico.

<sup>8</sup> Includes 487.36 miles in Canada.

<sup>9</sup> Includes 602.34 miles in Canada, and 11.22 miles in Mexico.

<sup>10</sup> Includes 3,030.33 miles in Canada, and 62.89 miles in Mexico.

<sup>11</sup> Includes 1,946.04 miles in Canada.

<sup>12</sup> Includes 470.74 miles in Canada.

<sup>13</sup> Includes 519.03 miles in Canada.

<sup>14</sup> Includes 2,935.81 miles in Canada.

<sup>15</sup> Includes 1,870.85 miles in Canada.

<sup>16</sup> Includes 1,761.58 miles in Canada.

<sup>17</sup> Includes 1,384.36 miles in Canada.

<sup>18</sup> Includes 1,343.45 miles in Canada.

<sup>19</sup> Includes 1,290.68 miles in Canada.



TABLE 2, (*continued*) MILEAGE, 1916<sup>a</sup>

On June 30, 1916, the roads covered by this abstract represented 259,210.86 miles of line operated, including 11,856.42 miles used under trackage rights. The aggregate mileage of railway tracks of all kinds covered by operating returns for these roads was 394,944.26 miles, classified as follows:

Item	Class I roads	Class II roads	Class III roads	Total
Miles of road.....	231,263.98	18,913.68	9,033.20	259,210.86
Miles of second main track.....	28,732.50	195.84	6.87	28,935.21
Miles of third main track.....	2,725.58	5.04	.....	2,730.62
Miles of fourth main track.....	1,960.00	.....	.....	1,960.00
Miles of all other main tracks.....	238.34	.....	.....	238.34
Miles of yard track and sidings.....	97,198.95	3,716.75	953.53	101,869.23
Total, all tracks.....	362,119.35	22,831.31	9,993.60	394,944.26

<sup>a</sup> Sources—Figures for 1914, *Statistics of Railways in the United States, 1914*, by the Interstate Commerce Commission, Statement No. 4, p. 13; for 1915, text of the twenty-eighth annual report on the *Statistics of Railways in the United States for year ended June 30, 1915*, statement No. 4, page 13; for 1916, *Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916* p. 2.

The figures above given for total mileage (all tracks), as compared with the corresponding statement for the preceding year, show an increase of 3,802.75 miles. Of this increase 1,641.54 miles were in single or first track, and 1,959.07 miles in yard track and sidings.

TABLE 3. RAILROAD GROUPS AND SYSTEMS

I. VANDERBILT INTERESTS		VI. HARRISMAN INTERESTS	
	Mileage		Mileage
Boston & Albany.....	304	Oregon Short Line.....	2,120
New York Central.....	5,206	Oregon-Washington R. R. & Nav. Co.	2,067
Lake Shore & Michigan Southern.....		Union Pacific System (remainder)...	3,615
Michigan Central.....	1,800	Southern Pacific System.....	10,397
New York, Chicago & St. Louis <sup>1</sup> .....	567	Illinois Central System.....	6,423
Lake Erie & Western.....	906	Central of Georgia.....	1,934
Long Four.....	2,361	Baltimore & Ohio System <sup>2</sup> .....	4,600
Pittsburgh & Lake Erie.....	224	Delaware & Hudson System <sup>3</sup> .....	930
Chicago, Indiana & Southern.....	350	San Pedro, Los Angeles & Salt Lake <sup>4</sup>	1,415
Toledo & Ohio, Central.....	446	Cincinnati, Hamilton & Dayton <sup>5, 6</sup> ...	1,015
Other affiliated eastern lines.....	677	Chicago & Alton <sup>1</sup> .....	1,030
Western Maryland.....	661	Total.....	35,556
Chicago & Northwestern <sup>1</sup> .....	10,162		
Total.....	23,675		
II. PENNSYLVANIA RAILROAD INTERESTS		VII. HILL INTERESTS	
Pennsylvania System.....	11,821	Northern Pacific.....	7,749
Pittsburgh & Western.....	2,013	Great Northern.....	7,870
Total.....	13,834	Chicago, Burlington & Quincy System.....	12,434
		Colorado & Southern.....	
		Total.....	28,053
III. MORGAN INTERESTS		VIII. FORMERLY CONTROLLED BY ERB-YOAKUM INTERESTS	
Rock Island.....	2,543	Minneapolis & St. Louis.....	1,646
Des Moines & Marquette <sup>1</sup> .....	2,321	Toledo, St. Louis & Western <sup>2</sup> .....	451
Northern Railway System.....	8,648	Prisco System <sup>3</sup> .....	6,391
Cincinnati, New Orleans & Texas Pacific.....	337	Chesapeake & Ohio.....	2,545
Mobile & Ohio.....	1,122	Missouri, Kansas & Texas System <sup>4</sup> ...	3,536
Atlantic Coast Line System.....	6,000	Hocking Valley.....	352
Chattanooga & Nashville.....	6,880	New Orleans, Mobile & Chicago <sup>5</sup> ...	403
Chicago Great Western.....	1,496	Total.....	15,324
Total.....	29,407		
IV. FORMERLY CONTROLLED BY GOULD INTERESTS		IX. NEW HAVEN INTERESTS	
Wabash System <sup>1</sup> .....	2,515	New York, New Haven & Hartford..	2,046
Washington & Lake Erie <sup>2</sup> .....	512	Boston & Maine <sup>3, 4</sup> .....	2,302
Albany Pacific <sup>5</sup> .....	7,294	New York, Ontario & Western.....	568
St. Louis Iron Mountain & Southern		Maine Central.....	1,209
St. Louis Southwestern <sup>4</sup> .....	1,818	Central New England.....	304
Dallas & Pacific.....	1,991	Rutland <sup>6</sup> .....	468
International & Great Northern <sup>4</sup> .....	1,160	Other lines.....	208
Denver & Rio Grande.....	4,071	Total.....	7,105
Western Pacific <sup>4</sup> .....			
Total.....	19,361	X. ATCHISON, TOPEKA & SANTA FE SYSTEM.....	11,546
V. FORMERLY CONTROLLED BY MOORE INTERESTS		XI. CHICAGO, MILWAUKEE & ST. PAUL SYSTEM.....	10,442
Rock Island System <sup>1</sup> .....	8,330	XII. SEABOARD AIR LINE SYSTEM..	3,362
Delaware, Lackawanna & Western <sup>2</sup> ...	1,000	XIII. PHILADELPHIA & READING SYSTEM.....	2,437
Lehigh Valley <sup>3</sup> .....	1,444	Grand total of above groups and systems.....	210,766
Total.....	10,774		

<sup>1</sup> Held to independent syndicate in 1916.<sup>2</sup> Jointly with other interests.<sup>3</sup> Ownership, Dec. 26, 1911; sold July 21, 1915.<sup>4</sup> On hands of receiver.<sup>5</sup> Stock held by federal trustees pending reorganization.

Of the 253,788.64 miles of road in the United States in 1915, 210,766 miles are classified into 13 groups according to ownership. In some of the systems included, financial control is not unified, the affiliation amounting to little more than the existence of harmonious mutual relations. (Table compiled by Dr. G. Huebner, Asst. Professor of Transportation and Commerce, Univ. of Pennsylvania; *American Year Book 1916*, page 541.)



[illegible]

Year	Switching and Terminal Companies .		All Operating Roads			
	All Districts		Grand Totals			
	Total number all classes of employees	Total compensation all classes of employees	Total number all classes of employees	Per 100 miles of line	Total compensation all classes of employees	
1914 . . . . .	36,039	\$30,062,967	1,710,290	667	\$1,281,117,292	
1915 . . . . .						
1916 . . . . .			1,654,075		\$1,403,068,437	

\* Figures for 1914 taken from Statistics of Railways, 1914, I. C. C., p. 26, statement 21; for 1915 taken from the Twenty-ninth annual report of the Statistics of Railways in the United States for the year ended June 30, 1915, I. C. C., p. 24, statement 12; for 1916 taken from Abstract of Income and Expenses of Railways in the United States for the year ended June 30, 1916, p. 3.

† Does not include returns for switching and terminal companies.

[illegible]

TABLE 5. SUMMARY OF EQUIPMENT IN SERVICE ON JUNE 30, 1915\*

Figures for equipment for the year 1914 are not given in detail because the classification changed in 1915 and was made more complete. Figures for 1916 are also incomplete as compared with 1915 but they are the only ones available.

Class of carriers and territory covered	Locomotives			Cars					Floating equipment				
	Steam	Other	Total in service	Freight train cars	Passenger train cars	Company service cars	Total in service	Contributed to fast freight lines	Steam- boats and tug boats	Barges, car floats and canal boats	Other floating equip- ment	Total in service	
Class I carriers:													
Eastern District.....	28,165	228	28,393	1,106,464	26,081	32,515	1,165,060	20,552	327	1,627	75	2,029	
Southern District.....	9,984	10	9,994	392,871	6,853	13,846	413,573	.....	23	100	16	139	
Western District.....	23,734	5	23,739	787,457	19,756	46,860	854,073	362	93	110	32	235	
Total.....	61,883	243	62,126	2,286,792	52,690	93,224	2,432,706	20,914	443	1,837	123	2,403	
Class II carriers:													
Eastern District.....	640	6	646	26,357	799	557	27,743	.....	13	3	1	17	
Southern District.....	464	.....	464	10,456	524	597	11,577	.....	1	.....	1	2	
Western District.....	958	11	969	23,297	763	1,002	25,062	.....	.....	.....	.....	.....	
Total.....	2,062	17	2,079	60,140	2,086	2,156	64,382	.....	14	3	2	19	
Class III carriers:													
Eastern District.....	192	.....	192	1,506	252	117	1,965	.....	1	.....	.....	1	
Southern District.....	300	3	303	3,124	318	149	3,591	.....	1	.....	.....	1	
Western District.....	306	1	309	4,686	359	288	5,333	.....	6	6	5	17	
Total.....	598	4	604	9,406	929	554	10,890	.....	8	6	5	19	

Sinking and Terminal Companies:											
Eastern District.....	811	8	819	11,446	60	2,027	13,333	4	17	3	34
Southern District.....	90	.....	99	953	11	89	1,053	1	.....	5	6
Western District.....	484	1	485	1,795	34	702	2,531	8	12	3	23
Total.....	1,304	9	1,403	14,104	105	2,818	17,117	13	29	11	53
All Operating Companies:											
Eastern District.....	29,808	242	30,050	1,145,893	27,192	35,216	1,208,301	345	1,647	79	2,071
Southern District.....	10,847	13	10,860	407,404	7,706	14,684	429,704	26	100	22	148
Western District.....	25,574	18	25,592	817,235	20,912	48,832	886,999	107	128	40	275
Total.....	66,229	273	66,502	2,370,532	55,810	98,752	2,525,094	478	1,875	141	2,494
United States, 1912.....											
United States, 1911.....	Not	61,327	62,202	2,215,549	51,490	115,635	2,392,674	.....	.....	.....	.....
United States, 1910.....	classified	58,947	59,712	2,135,521	47,095	108,115	2,290,331	.....	.....	.....	.....
United States, 1909.....	similarly	57,212	57,212	2,073,006	45,584	99,000	2,215,280	.....	.....	.....	.....
United States, 1908.....	.....	56,733	56,733	2,089,302	45,117	96,702	2,231,181	.....	.....	.....	.....

• This statement includes Class I, Class II, Class III and Switching and Terminal Companies, as of June 30, 1915. Total figures for the entire United States are given for years 1908 to 1912 inclusive but do not include equipment in the service of switching and terminal companies. Figures for floating equipment are not given by I. C. for years prior to 1915. Table taken from the Text of the Twenty-eighth annual report on the Statistics of Railways in the United States for the year ended June 30, 1915, p. 15, statement No. 7. The total figures for the entire United States for the years 1908 to 1912 inclusive are taken from Statistics of Railways 1914, I. C. C., p. 16, statement No. 9. For 1916 the figures are from the Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916, p. 3.

TABLE 5, (continued) EQUIPMENT, 1916<sup>a</sup>

It appears from the annual reports submitted to the Commission by the roads covered by this abstract that there were 63,862 locomotives in their service on June 30, 1916, as shown by the following statement:

Kind of locomotive	Class I roads	Class II roads	Class III roads	Total
Steam.....	60,790	1,928	960	63,578
Other.....	267	14	3	284
Total.....	61,057	1,942	863	63,862

The total number of cars of all classes in service was 2,478,159, assigned as follows: Passenger service, 54,664; freight service, 2,326,987; company service, 96,508. These figures\* do not include so-called private cars of commercial firms or corporations.

Of the cars in freight service, exclusive of caboose cars, 2,298,263 were classified as follows:

Item	Class I roads		Class II roads	
	Number	Aggregate capacity	Number	Aggregate capacity
		<i>Tons</i>		<i>Tons</i>
Box cars.....	1,014,219	36,582,648	9,015	276,252
Flat cars.....	120,393	4,505,486	12,783	386,306
Stock cars.....	82,123	2,652,574	1,294	36,752
Coal cars.....	875,316	41,244,672	22,904	998,558
Tank cars.....	9,462	380,092	249	7,136
Refrigerator cars.....	51,610	1,669,462	130	3,355
Other freight-train cars.....	83,189	3,731,160	6,826	232,703
Total.....	2,236,312	90,766,094	53,201	1,941,172

Item	Class III roads		Total	
	Number	Aggregate capacity	Number	Aggregate capacity
		<i>Tons</i>		<i>Tons</i>
Box cars.....	1,184	28,205	1,024,418	36,887,105
Flat cars.....	3,543	99,495	136,719	4,991,377
Stock cars.....	70	1,307	83,487	2,600,633
Coal cars.....	1,418	56,057	899,638	42,299,287
Tank cars.....	117	3,928	9,828	391,176
Refrigerator cars.....	6	150	51,746	1,672,967
Other freight-train cars.....	2,412	49,127	92,427	4,012,990
Total.....	8,750	238,209	2,298,263	92,945,535

\* Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916, p. 3.



TABLE 6. PUBLIC SERVICE OF RAILROADS\*

Item	Year ended June 30		
	1914 <sup>1</sup>	1915 <sup>1</sup>	1916 <sup>2</sup>
Number of passengers carried.....	1,053,138,718	976,303,002	1,005,683,174
Number of passengers carried 1 mile....	35,258,497,609	32,384,247,563	34,213,596,127
Number of passenger carried 1 mile per mile of road.....	144,278	131,165	137,818
Number of tons of freight carried including freight received from connections.....	1,976,138,155	1,802,018,177	2,225,943,388
Net mileage or number of tons carried 1 mile.....	288,319,890,210	276,530,302,723	343,099,937,805
Weight density, or number of tons carried 1 mile per mile of road.....	1,176,923	1,121,059	1,380,349
Average receipts per passenger per mile, cents.....	1.982	1.985	2.006
Average receipts per ton per mile, cents..	0.733	0.732	0.716

\* These figures cover returns for class I and II roads.

<sup>1</sup> Figures for 1914-15 from Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1915, p. 6.

<sup>2</sup> Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916, p. 6.



	1906	1907	1908	1909	1910	Total	1911	1912	1913	1914	1915	Total	1916	1917
Mileage returns for balance sheet figures not stated in the annual statistical report of the Commission.	2,235,766,197	1,896,977,271	1,746,515,516	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Does not include figures for 1901, as no mileage is stated for that year.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Returns do not include data for switching and terminal companies.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
The averages shown for 1908 to 1912 are not fully comparable with those for previous years, chiefly for the reason that the figures upon which they are based do not include returns for switching and terminal companies.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Represent returns for Class I and Class II roads and their nonoperating subsidiaries.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Represent returns for Class I and Class II roads and their nonoperating subsidiaries. Figures are taken from the 1913 statistical report.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Returns for operations, columns (b) to (f), inclusive, are based on figures which exclude returns for so-called small roads and switching and terminal companies.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Data for Class I and Class II roads.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Figures in columns (b) to (f), inclusive, and (f) are from monthly reports of revenues and expenses of Class I roads, excluding switching and terminal companies.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Based on estimated figures of the Twenty-ninth Annual Report on the Statistics of Railways in the United States for year ended June 30, 1913, p. 37, statement No. 22. These figures go back to 1903. Each figure obtained from Statistics of Railways for 1903 and 1907 each containing a similar table covering a period of years.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
The averages shown for 1908 to 1912 are not fully comparable with those for previous years, chiefly for the reason that the figures upon which they are based do not include returns for switching and terminal companies.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Figures for 1916 for Class I and Class II roads only.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Net income—For detailed analysis of Revenues and Expenses.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743
Net income—For 1915, Table of the Twenty-ninth Annual Report on the Statistics of Railways in the United States, I. C. C., pp. 52-63 inclusive; for 1916, Table of the Twenty-ninth Annual Report on the Statistics of Railways in the United States, I. C. C., pp. 49-73 inclusive; for 1917, Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1917, pp. 7-10 inclusive.	2,086,166,578	1,746,515,516	1,716,401,791	1,716,401,791	1,450,520,201	1,881,579,118	1,976,331,864	2,033,057,529	2,285,922,026	2,966,179,768	2,083,662,956	15,019,978,048	10,602,174,743	10,602,174,743

1 Mileage returns for balance sheet figures not stated in the annual statistical report of the Commission.

2 Does not include figures for 1901, as no mileage is stated for that year.

3 Returns do not include data for switching and terminal companies.

4 The averages shown for 1908 to 1912 are not fully comparable with those for previous years, chiefly for the reason that the figures upon which they are based do not include returns for switching and terminal companies.

5 Represent returns for Class I and Class II roads and their nonoperating subsidiaries.

6 Represent returns for Class I and Class II roads and their nonoperating subsidiaries. Figures are taken from the 1913 statistical report.

7 Returns for operations, columns (b) to (f), inclusive, are based on figures which exclude returns for so-called small roads and switching and terminal companies.

8 Data for Class I and Class II roads.

9 Figures in columns (b) to (f), inclusive, and (f) are from monthly reports of revenues and expenses of Class I roads, excluding switching and terminal companies.

10 Based on estimated figures of the Twenty-ninth Annual Report on the Statistics of Railways in the United States for year ended June 30, 1913, p. 37, statement No. 22. These figures go back to 1903. Each figure obtained from Statistics of Railways for 1903 and 1907 each containing a similar table covering a period of years.

11 The averages shown for 1908 to 1912 are not fully comparable with those for previous years, chiefly for the reason that the figures upon which they are based do not include returns for switching and terminal companies.

12 Figures for 1916 for Class I and Class II roads only.

13 Net income—For detailed analysis of Revenues and Expenses.

14 Net income—For 1915, Table of the Twenty-ninth Annual Report on the Statistics of Railways in the United States, I. C. C., pp. 52-63 inclusive; for 1916, Table of the Twenty-ninth Annual Report on the Statistics of Railways in the United States, I. C. C., pp. 49-73 inclusive; for 1917, Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1917, pp. 7-10 inclusive.



Year	Per cent of stock yielding dividends	Amount of stock yielding dividends	Amount of dividends	Average rate on dividend-yielding stock	Average rate on all stock
1915 <sup>11</sup>					
Class I carriers and their non-operating subsidiaries	63.40	\$5,149,819,412	\$323,802,138	6.29	Per cent.
Class II carriers and their non-operating subsidiaries	15.94	63,701,400	4,097,681	6.43	1.03
Class III carriers and their non-operating subsidiaries	5.50	6,328,750	518,119	8.19	.46
Total all classes	60.45	5,219,546,562	328,417,938	6.29	3.80
1914 <sup>11</sup>	64.30	5,607,072,956	451,653,346	7.97	5.13
1913 <sup>11</sup>	66.14	5,790,982,416	369,077,546	6.37	4.22
1912 <sup>11</sup>	64.73	5,581,280,249	400,315,313	7.17	4.64
1911 <sup>11</sup>	67.65	5,780,250,226	460,195,276	8.03	5.42
1910 <sup>11</sup>	66.71	5,412,578,457	405,771,416	7.50	5.00
1909 <sup>11</sup>	64.01	4,920,174,118	321,071,626	6.53	4.18
1908 <sup>11</sup>	65.69	4,543,370,740	290,695,251	8.07	5.30
1907 <sup>11</sup>	67.37	4,948,756,203	308,088,627	- 6.23	4.19
Year	Per cent of stock yielding dividends	Amount of stock yielding dividends	Amount of dividends	Average rate on dividend-yielding stock	Average rate on all stock
1906	66.54	84,526,955,790	\$272,794,974	6.03	Per cent
1905	63.84	4,118,068,714	237,984,463	5.78	3.63
1904	57.47	3,643,427,319	221,941,049	6.09	3.50
1903	56.06	3,440,737,969	194,726,176	5.70	3.30
1902	55.40	3,337,644,681	183,391,655	5.55	3.08
1901	51.27	2,977,575,179	154,735,784	5.26	2.70
1900	45.66	2,665,969,895	139,597,972	5.23	2.36
1899	40.61	2,239,502,545	111,009,322	4.94	2.01
1898	33.74	1,518,112,062	94,152,869	5.29	1.75
1897	29.90	1,603,549,978	87,110,599	5.43	1.62
1906	29.83	1,559,024,075	87,603,371	5.62	1.68
1905	29.94	1,485,615,453	85,297,243	5.74	1.73
1904	36.57	1,767,925,565	93,315,256	5.40	1.97
1903	38.76	1,909,600,546	100,929,863	5.58	2.16
1902	39.40	1,824,705,437	97,514,745	5.35	2.11
1901	40.36	1,794,390,636	91,117,913	5.07	2.06
1900	36.24	1,594,131,933	87,071,613	5.45	1.97
1899	38.33	1,629,750,927	82,110,196	5.04	1.93
1898	38.56	1,490,267,149	80,238,065	5.38	2.06

\* Twenty-eighth Annual Report on the Statistics of Railways in the United States for the year ended June 30, 1915, pp. 22, 23 and 25. Figures for 1914 not completely comparable with 1915 and for that reason are not given here.

† Includes \$508,345, receipts outstanding for installments paid, and \$500,036, receipts outstanding for funded debt.

‡ Includes \$208,345, receipts outstanding for installments paid.

§ Includes \$5,935,162, debenture stock.

|| Includes \$600,036, receipts outstanding for funded debt.

¶ Does not include returns for switching and terminal companies.

† Includes \$1,750, receipts outstanding for funded debt.

‡ Includes \$213,283, receipts outstanding for funded debt.

§ Includes \$220,000, receipts outstanding for funded debt.

|| Includes \$65,000, receipts outstanding for funded debt.

¶ Includes \$41,000, receipts outstanding for funded debt.

|| Includes \$30,000, debenture stock.

|| Does not include returns for switching and terminal companies.



Class of roads	Total railway capital	Stock			Funded debt						
		Total amount	Common	Preferred	Debenture	Total amount	Mortgage bonds	Collateral trust bonds	Income bonds	Miscellaneous obligations	Equipment obligations
Class I roads.....	\$1,201,170,117	\$254,143,290	\$254,129,240	\$29,094,050	\$20,000	\$1,027,026,827	\$915,040,966	\$71,365,363	\$12,514,115	\$5,919,550	\$23,886,533
Class II roads.....	60,039,344	32,402,050	32,398,550	195,500	.....	27,637,394	24,996,381	450,000	175,913	110,000	.....
Class III roads.....	7,737,353	2,063,020	2,063,020	24,000	.....	5,673,363	5,370,363	5,000	100,000	.....	.....
Non-operating roads.....	41,932,309	16,968,734	15,635,534	1,329,900	.....	24,962,575	24,291,575	194,000	295,500	92,500	.....
Total.....	1,410,879,153	315,576,094	284,012,644	31,543,450	20,000	1,095,303,059	975,501,285	72,004,363	14,486,528	6,122,050	23,886,533

• Abstract of Statistics of Steam Railways in the United States for the year ended June 30, 1916, pp. 4 and 5.

Of the total capital stock actually outstanding for the roads under consideration, \$3,581,434,810, or 40.96 per cent, paid no dividends. The amount of dividends declared during the year (by both operating and non-operating companies represented in this statement) was \$411,975,955, being equivalent to 7.98 per cent on dividend-paying stock. The average rate of dividends paid on all stocks actually outstanding, pertaining to the roads under consideration, was 4.71.



TABLE 9. SUMMARY OF THE WORLD'S RAILWAYS AND RATIO OF MILEAGE TO AREA AND POPULATION IN EACH COUNTRY, TOGETHER WITH STATE-OWNED MILEAGE IN 1913\*

Countries	Mileage in 1913		Miles of line per 100 sq. miles	Inhabitants per mile of line
	State railways	Total railways		
I. EUROPE				
Germany.....	36,538	39,513	19.0	1,698
Austria-Hungary (including Bosnia and Herzegovina).....	23,391	28,643	10.9	1,792
Great Britain and Ireland.....		23,385	19.3	1,943
France.....	5,597	31,737	15.3	1,241
Russia in Europe (including Finland 2,329 miles).....	24,509	38,562	1.9	3,360
Italy.....	9,070	10,933	9.8	3,162
Belgium.....	2,699	5,465	48.1	1,356
Luxemburg.....	122	326	32.5	757
Netherlands.....	1,111	2,019	15.8	2,880
Switzerland.....	1,698	3,015	18.8	1,177
Spain.....		9,517	5.0	1,967
Portugal.....	712	1,849	5.2	2,932
Denmark.....	1,215	2,338	15.8	1,105
Norway.....	1,631	1,917	1.6	1,222
Sweden.....	2,858	8,984	5.2	609
Servia.....	633	633	3.4	4,480
Roumania.....	2,200	2,333	4.7	2,932
Greece.....		998	4.0	2,644
Bulgaria.....	1,197	1,197	3.2	3,584
Turkey in Europe.....		1,236	1.9	5,040
Malta, Jersey, Isle of Man.....		68	16.1	5,376
Total for Europe, 1913.....	115,181	214,668	5.6	2,042
Total for Europe, 1912.....	111,745	212,425	5.6	2,064
" " " 1911.....	109,719	210,574	5.6	2,083
" " " 1910.....	107,727	207,444	5.5	2,180
" " " 1909.....		204,864	5.5	1,923
" " " 1908.....		201,619	5.3	1,941
" " " 1907.....		109,345	5.3	1,887
" " " 1906.....		196,437	5.2	1,993
" " " 1905.....		192,507	5.1	2,084
" " " 1904.....		189,806	5.0	2,084
" " " 1903.....		186,685	5.0	2,084
" " " 1902.....		183,989	4.9	2,127
" " " 1901.....		180,817	4.8	2,174
" " " 1900.....		176,396	4.7	2,220
" " " 1899.....		172,953	4.6	2,220
" " " 1898.....		167,614	4.4	
" " " 1897.....		163,550	4.3	
" " " 1896.....		160,030	4.2	
Increase in 18 years.....		54,638		

\* This table is taken from Railway Statistics of the United States of America for the year ending June 30, 1916, by the Bureau of Railway News and Statistics, pp. 34, 35 and 36. The original source of these figures is the Archiv für Eisenbahnwesen, May-June, 1915.

TABLE 9, (continued). WORLD'S RAILWAYS AND RATIO OF MILEAGE TO POPULATION

Countries	Mileage in 1913		Miles of line per 100 sq. miles	Inhabitants per mile of line
	State railways	Total railways		
II. AMERICA				
Canada.....	1,768	29,233	0.8	265
United States of America (inclusive of Alaska 653 miles).....		234,760	7.1	361
Newfoundland.....		768	1.8	309
Mexico.....	12,324	15,805	2.1	922
Central America.....	358	2,001		
Greater Antilles.....	149	3,398		
Lesser Antilles.....		335		
Colombia.....	110	620	0.13	7,331
Venezuela.....	68	632	0.16	2,849
British Guiana.....		104	0.11	2,829
Dutch Guiana.....		37		
Ecuador.....		650	0.64	2,160
Peru.....	1,050	1,715	0.32	2,781
Bolivia.....		1,499	0.32	1,507
Brazil.....	6,712	15,491	0.48	1,613
Paraguay.....		231	0.16	2,734
Uruguay.....		1,636	2.4	637
Chile.....	1,977	3,949	1.3	840
Argentine Republic.....	2,482	20,593	1.9	238
Total for America.....	27,998	353,466		
III. ASIA				
Central Russia in Asia, including Siberia and Manchuria.....	6,788	9,864		
China.....		6,109	0.14	53,760
Japan (including Korea).....	4,559	6,811	2.7	9,487
British India.....	29,252	34,572	1.8	8,900
Ceylon.....		602	2.4	6,720
Formosa.....		33	0.005	268,800
Asia Minor, Syria, Arabia, including Cyprus.....	910	3,390	0.48	5,780
Portuguese Indies.....		51	3.5	11,520
Malay Archipelago.....		856	2.6	840
Dutch Indies.....	1,533	1,760	0.8	16,128
Siam.....	596	701	0.32	13,440
Cochin China.....		2,292		
Total for Asia.....	43,938	67,050		
IV. AFRICA				
Egypt.....	2,903	3,687	1.0	3,043
Algeria and Tunis.....	1,799	3,957	1.1	1,608
Belgian Congo.....		862		
South African Union, including Cape Colony, Natal, Central South Africa and Rhodesian Railways.....	7,829	10,929		

TABLE 9, (continued). WORLD'S RAILWAYS AND RATIO OF MILEAGE TO POPULATION

Countries	Mileage in 1913		Miles of line per 100 sq. miles.	Inhabitants per mile of line
	State railways	Total railways		
COLONIES				
German.....	2,589	2,589		
English.....	1,311	2,350		
French.....		1,995		
Italian.....		96		
Portuguese.....		1,007		
Total for Africa.....	16,431	27,472		
V. AUSTRALIA				
New Zealand.....	2,854	2,883	2.7	354
Victoria.....	3,639	3,664	4.2	347
New South Wales.....	3,922	4,088	1.3	391
South Australia.....	2,076	2,308	0.16	181
Queensland.....	4,514	4,807	0.64	188
Tasmania.....	506	699	2.7	266
West Australia.....	2,848	3,422	0.32	138
Hawaii, etc.....		88	1.3	1,241
Total for Australia.....	20,359	21,959	0.64	273
RECAPITULATION				
I. Europe.....	115,181	214,668	5.6	2,042
II. America.....	27,998	353,466		
III. Asia.....	43,938	67,050		
IV. Africa.....	15,431	27,472		
V. Australia.....	20,359	21,959	0.64	273
Total.....	223,907	684,615		

## V

## STATISTICAL BIBLIOGRAPHY

For a complete detailed study of the railroads of the United States the following list of statistical sources will be found valuable. This list includes only the more important sources.

**I. INTERSTATE COMMERCE COMMISSION PUBLICATIONS**

A. *Statistical of Railways in the United States*. Published annually. This is the most comprehensive and detailed work available, presenting operating and financial statistics of railroads in this country. It is compiled from the annual reports of each road to the Commission and contains the following tables: (1) general balance sheet, income statement, profit and loss statement, operating revenues and expenses in detail, operating statistics, and an itemized statement of capital and investment other than road and equipment. These tables are given for each railroad. The roads are divided according to the classification adopted by the Commission defined (p. 000) in this volume and tables arranged accordingly. (2) Preceding these tables is an analytical report by the Commission's statistician together with condensed tabulations summarizing the large tables.

This report is usually two years late in being published, but this disadvantage is partially offset by preliminary reports made as follows:

1. *Abstract of Statistics of Steam Railways in the United States*. A brief tabular summary of the statistics of the more important groups of railroads.
2. *Preliminary Abstract of Statistics of Common Carriers* containing an abstract of the individual reports of railroads to the Commission.
3. *Text of the Annual Report on the Statistics of Railways*, containing most of the tables, and summaries as well as the statistician's analyses which will appear in the final volume. This is not complete.

These statements appear in the above order anywhere from one to two years following the close of the fiscal year.

In addition, the Commission publishes as soon as possible after the close of each month a statement of the total monthly earnings and expenses of railroads.

**II. STATE REPORTS**

Most of the states having utilities or railroad commissions publish statistics covering the roads within their borders. Some of these, of which New York is typical, contain as complete and accurate information as to intrastate railroads as the Interstate Commerce Commission reports for interstate railroads. These can be obtained from the various state authorities.

**III. RAILROAD STATISTICAL BUREAUS**

Two bureaus maintained by the railroads publish at regular intervals statistics and other information concerning railroads.

1. The Bureau of Railway Economics, Washington, D. C., publishes a monthly statement of revenues and expenses of steam roads of Class I. In addition they publish other bulletins at intervals. Among the recent ones are the

following: (a) *Summary of Railway Returns for the fiscal year ending June 30, 1916* (similar report for 1915); (b) *Comparative Railway Statistics, United States and Foreign Countries 1912, and 1913*; (c) *Statistics of Railways 1904-1914, United States*. This bureau compiles its statistics from the annual reports of the railroads to the Interstate Commerce Commission and endeavors to publish them as soon as possible after the close of each stated period.

2. The Bureau of Railway News and Statistics of Chicago publishes annually a pamphlet containing statistical tables covering American and foreign railways, and also a number of *The Railway Library* which contains selections written by leading authorities in the field of transportation as well as statistical compilations.

The publications of these two bureaus can be obtained upon request.

#### IV. RAILWAY ANNUAL REPORTS TO STOCKHOLDERS

These are prepared according to forms prescribed by the Interstate Commerce Commission. They contain the most detailed statistical analysis of the individual roads obtainable.

V. POOR'S MANUAL OF RAILROADS AND MOODY'S MANUAL OF RAILROADS each of which contains an analytical summary of statistics for each road in the United States with comparisons with previous years. The statistics are taken from the railroad's annual reports.

#### VI. VARIOUS BROKERAGE HOUSES

also compile and publish statistical reports dealing particularly with the financial aspects of the railroads.

## BOOK DEPARTMENT

### THE BUSINESS MAN'S LIBRARY

#### BANKING INVESTMENTS AND FINANCE

DUNBAR, CHARLES F. *The Theory and History of Banking* (3rd ed., rev. and enlarged by Oliver M. W. Sprague). Pp. viii, 297. Price, \$1.50. New York: G. P. Putnam's Sons, 1917.

To this edition of Dunbar's work Professor Sprague has contributed three new chapters on Foreign Exchange, Central Banks and the Federal Reserve Banking System. As the chapters on Combined Reserves and the Bank of Amsterdam have been omitted, over one-third of the volume is now the work of Professor Sprague.

E. M. P.

LOUGH, WILLIAM H. *Business Finance*. Pp. xiv, 631. Price, \$3.00. New York: The Ronald Press Company, 1917.

The author states his purpose in the preface: to write a book useful to organizers, directors, executive officers, bankers, bond dealers, financial men, engineers, lawyers, accountants and other professional men. The book deals primarily with business conditions and financial practice in the United States and includes many references also to the experience and practice of other countries. The numerous concrete cases of financial operations are extremely valuable and much space is given to their exposition, but some of them seem to be superfluous. The impression given is that the book has been written largely from data at hand used somewhat diffusely without any special effort having been made to cover some of the subjects in their entirety. For example, his treatment of Subscription Privileges or "Rights" is in some respects inadequate.

The book is on the whole a valuable and practical contribution to the subject, on which little has been written. The various topics are carefully arranged and the exposition has been made exceptionally clear and sufficiently elementary for those who are unfamiliar with the subject of business finance in any of its aspects.

T. C. B.

TODD, JOHN A. *The Mechanism of Exchange*. Pp. xiv, 255. Price, \$2.25. New York: Oxford University Press, 1917.

As a convenient and well-arranged treatise on money and banking, Professor Todd's volume is to be commended. Within a comparatively brief space he has presented a very excellent description of the most important facts and theories in the field, all of them studied, of course, from the English viewpoint. References to other systems than the English are few and merely incidental to the main account. The historical and theoretical aspects of the question are well covered,

some of the more important chapters being those on the quantity theory of money, bimetallism, the English banking system and the theory of international trade. A statistical appendix furnishes some valuable data for reference purposes and several diagrams on prices and trade returns are also included.

The author makes no contribution of importance to the theory of his subject. His defense of an ideal paper money without a metallic reserve is not convincing. His confidence that "the war has taught the governments of Europe what was well enough known as a matter of theory before, that the evils of paper money lie entirely in its abuse" (p. 85) suggests an optimism regarding war finance that others may not share. Even his belief in "the much higher standard of national honour and financial efficiency and rectitude which has been displayed by the governments of the belligerents" (p. 104) does not quite satisfy those who may believe that even high-minded officials often are unable to control such pressing fiscal problems as those of the present. Chapter XIII, in which he tests the quantity theory and finds it wanting, is weakened by an inconsistency in the use of the word "money" which leads to an unfair criticism of the theory he is attacking and entirely invalidates his argument.

E. M. PATTERSON.

*University of Pennsylvania.*

#### FOREIGN TRADE AND COMMERCIAL GEOGRAPHY

BARTHOLOMEW, J. G. *The Advanced Atlas of Physical and Political Geography*. Pp. 107. Price, \$3.75. New York: Oxford University Press, 1917.

The name Bartholomew attached to any cartographic production is sufficient to insure exactness of detail and excellence of workmanship. It is to be expected therefore, that this new atlas must be heartily commended to all students of geography, but it needs to be inspected in order to get an adequate appreciation of some of the physical maps.

As is customarily the case in preparing atlases for European use primarily there are proportionately many more maps of the old world than of the new, thus six pages are given to Australia and only four to South America. A number of useful, new maps, not found in earlier atlases, have been included, increasing materially the general value of the book.

W. S. T.

HAUSER, HENRI. *Germany's Commercial Grip on the World* (trans. by Manfred Emanuel). Pp. xv, 259. Price, \$1.65. New York: Charles Scribner's Sons, 1917.

This book is an explanation of Germany's business methods which, according to the author, resulted in the world war. Her rapid industrial rise, which is briefly sketched, created the necessity for expansion in which the principal factors were the banks and credit, cartels and dumping, means of transport and the aid of the state. By these agencies and a systematic study of the markets she brought about the economic penetration of the world. But success was by no means entirely due to a highly-organized, well-directed, subsidized industrial and commercial system. Germany's work-energy and extreme productivity, her spir-



of association, her imperial union of masters and men, of science and industry, combined with a process of standardization, resulted in an overproduction and laid the foundation for a complete economic conquest of the world. France and the allies are warned of the dangers confronting them economically at the return of peace unless some of the methods of the enemy be employed and some of the dangers of those methods be avoided. One criticism, of logic rather than content, might be raised, namely, whether the assertion that Germany might by peaceful methods have subdued the world economically in the next twenty years, can be reconciled with the conclusion of her entire responsibility for the war, though an explanation is offered. It is, however, an instructive work, loaded with telling facts.

K. F. G.

#### INDUSTRIAL MANAGEMENT

SHEPARD, GEORGE H. *The Application of Efficiency Principles*. Pp. x, 368. Price, \$3.00. New York: Engineering Magazine Company, 1917.

FICKER, NICHOLAS T. *Shop Expense Analysis and Control*. Pp. ix, 236. Price, \$3.00. New York: Engineering Magazine Company, 1917.

Mr. Shepard's book fills the gap between Taylor's *Shop Management*, Emerson's *Efficiency* and *The Twelve Principles of Efficiency*, on the one hand; and Parkhurst's *Applied Methods of Scientific Management* and Knoepfel's *Installing Efficiency Methods*, on the other hand. While Taylor's and Emerson's works outline philosophies and principles, Knoepfel's and Parkhurst's books present discussions of specific instances. Mr. Shepard presents practical methods of applying the philosophies and principles to any given case. He regroups Emerson's twelve principles as follows: (a) all inclusive: higher common sense; (b) primary: ideals, personnel, organization; (c) secondary: adaptation of condition and work to each other, correct methods, instruction, fair deal, discipline, planning and despatching, records, standards, efficiency reward.

The examples given to illustrate the adaptation of principles to conditions are drawn from a wide variety of industries. Mr. Shepard's book will prove a valuable aid to industrial managers in answering the question: "How can I apply efficiency principles to my business?"

Mr. Ficker's work on shop expense is a far more comprehensive work in this field than has as yet been published. The fact that manufacturing expense is, in almost all industries, greater than the total direct labor should amply justify manufacturers in itemizing and allotting shop expense just as thoroughly as they analyze direct labor. Economies in shop expense are not more difficult, but frequently easier to bring about, after analysis, than economies in direct labor. The author presents a thorough discussion of the subject of classification and interpretation of general ledger accounts pertaining to production; also such matters of administration as rent and current variation ratios for adjusting current costs. Numerous examples are given of graphical cost statistics and reports. Mr. Ficker's book will be a valuable addition to every cost accountant's library.

HUGO DIEMER.

Ordnance Dept., U. S. R.,  
Lowell, Mass.

## TRANSPORTATION

BLAKE, HENRY W. and JACKSON, WALTER. *Electric Railway Transportation*. Pp. vii, 487. Price, \$5.00. New York: McGraw-Hill Book Company, 1917.

The authors of this volume have for years been closely associated with the electric railway industry. Mr. Blake is editor of the *Electric Railway Journal*, and has served as a member of many important committees of the American Electric Railway Association. Mr. Jackson is a former associate editor of the *Journal* and its present business manager.

No claim is made that the volume brings to light a large amount of hitherto unpublished material. Most of the data contained in the book has appeared in transactions of various electric railway organizations. It is, however, the first attempt which has been made to bring within one cover a connected account of the electric railway industry. In general, the volume deals with three main problems: traffic, fares, and the handling of employees. It is copiously illustrated with diagrams and charts, bringing out the various matters discussed, and will be of great value to all young men about to enter the electric railway field, or indeed to anyone desiring a knowledge of this important industry.

The style is simple and the text is illustrated by hundreds of examples taken from current practice.

T. C.

DIXON, FRANK HAIGH and PARMELEE, JULIUS H. *War Administration of the Railways in the United States and Great Britain*. Pp. x, 155. Price, 000. New York: Oxford University Press, 1918.

This monograph is one of a series of preliminary economic studies of the war edited by David Kinley, Professor of Political Economy, University of Illinois, and published by the Carnegie Endowment for International Peace. The co-authors, Professor Frank Haigh Dixon of Dartmouth College and Julius H. Parmelee, are Chief Statistician and Statistician, respectively, for the Bureau of Railway Economics maintained at Washington, D. C., by the railroads of the United States.

The foreword states that the authors have attempted nothing beyond a simple narrative. The section dealing with the United States covers the period of voluntary coöperation by the railroads of this country to solve the transportation problems caused by the war, or, to be more exact, from the fall of 1915 when the American Railway Association appointed the Special Committee on Coöperation with the Military Authorities, to the end of 1917 when recommendations were made to Congress for greater unification of management, the most important of which was the special report of the Interstate Commerce Commission of December 6, 1917. The organization, itself, the problems encountered and the extent to which they were solved by that organization comprise the major portion of the description.

The history of the war administration of railways in Great Britain is similarly presented. Although the author's purpose was not to compare the handling of war transportation problems in the two countries, they have given the reader a

basis for contrasting the methods of both countries and some of the results accomplished.

There are several appendices of interest. Concerning this country, there is given the personnel of the railway war organization and the proclamation of President Wilson taking possession of the railways. Concerning Great Britain there is given the text of the *Regulation of Forces Act, 1871* (under which Great Britain took over her railroads), the text of the law granting special powers to the Board of Trade and the orders which that body issued.

This study is particularly timely, although it could have been made more valuable by source references, especially to some of the statistics used.

W. E. WARRINGTON.

*University of Pennsylvania.*

HERRICK, C. A. *History of Commerce and Industry*. Pp. xxv, 562. Price, \$1.60. New York: The Macmillan Company, 1917.

Professor Herrick gives a survey of the development of commerce and industry from the earliest historical times to the present. He preserves admirable proportions in the division of space, and writes in a clear and readable style. In his discussion of the commercial development of the English colonies in America the author falls into the all too common error of mistating the terms and purposes of the English Acts of Trade, and he fails to note the sharp distinction between the English colonial policy as developed before 1763 and the policy pursued after that year.

T. W. V. M.

HUNGERFORD, EDWARD. *The Railroad Problem*. Pp. 265. Price, \$1.50. Chicago: A. C. McClurg and Company, 1917.

A series of articles in popular style on the "sick man of American Business." Mr. Hungerford analyzes the present difficulties of the railroads and points "the way out" through a better government policy, increased efficiency, arbitration of labor disputes, and the utilization of other means of transportation.

T. W. V. M.

JACKSON, DUGALD C. and McGRATH, DAVID J. *Street Railway Fares: Their Relation to Length of Haul and Cost of Service*. Pp. xiii, 160. Price, \$2.50. New York: McGraw-Hill Book Company, Inc., 1917.

The electric railway industry is unfortunate in having the little book *Street Railway Fares* by Messrs. Jackson and McGrath appear at this time. The original conclusions in the book are largely based upon a superficial study of a very small group of companies situated in the state of Massachusetts, where operating and traffic conditions are quite dissimilar to those prevailing in the larger part of the United States. Thus, for example, the conclusion is reached that, due to traffic losses, "the companies received little or no increases in gross revenue in spite of a 30 per cent increase in rates of fare" (page 55) where six-cent fares have been inaugurated. This conclusion is based upon an insufficient examination of the

statistics relating to nine companies in Massachusetts, and ignores the generally very satisfactory financial results which have been secured throughout the country where six-cent fares have been tried.

A large part of the volume consists of a restatement without credit of material which appeared in *Studies in the Cost of Urban Transportation Service* by Mr. F. W. Doolittle, comprising the results of his investigations as Director of the Bureau of Fare Research of the American Electric Railway Association.

T. C.

MACGIBBON, DUNCAN A. *Railway Rates and the Canadian Railway Commission*. Pp. xv, 264. Price, \$1.75. Boston: Houghton, Mifflin Company, 1917.

This book, which was awarded first rank in the competitive essay contest founded by Messrs. Hart, Schaffner and Marx, deals mainly with the regulation of rates by the Canadian Railway Commission. The writer's main purpose was to "exhibit the guiding principles in the rate decisions" of the commission.

As a background the book contains an account of the development of Canadian waterways, the policy of the Confederation Provinces, the construction and development of the Canadian transcontinental railroads, the results of the general transportation policy of Canada, and the regulative statutes, commissions and other forms of public control that have obtained in Canada. Since the author was primarily concerned with the work of the present Canadian Commission his account of existing freight rate structures and rate territories is brief.

The greater part of the book, which is well written and bears evidence of careful study, deals with the rate theories developed by the commission in connection with the charge of excessive rates; those developed in connection with the charge of unjust discrimination; and the relation between the commission's rate theories and public policy such as the making of charges to develop or protect industries and traffic. Dr. MacGibbon concludes that "on the whole, while the Board has caused the reduction of excessive rates, and has eliminated certain abuses of discrimination, it has not used its power over rates and tariffs to influence the ordinary commercial development of the Dominion. It has essentially functioned as a convenient informal court of justice rather than as a regulative commission."

G. G. H.

MUNDY, FLOYD W. (Ed.). *The Earning Power of Railroads, 1917*. Pp. 478. Price, \$2.50. New York: Jas. H. Oliphant and Company, 1917.

The 1917 issue of Mundy's *Earning Power of Railroads* adheres to the same outline or plan as the issue of the preceding year. It contains ten chapters containing definitions of railway accounting terms and outlines the principles that should be applied by investors. These explanatory chapters are followed by a series of tables containing statistics of the fiscal year 1916 in comparison with those of previous years for the principal railroads of the United States, Canada, Cuba and South America. The tables are supplemented by over 260 pages of notes concerning the capitalization, dividends, physical and financial condition and earnings of the railroads included in the statistical tables.

G. G. H.

PULSFORD, EDWARD. *Commerce and the Empire 1914 and After*. Pp. x, 248. Price, 7s. 6d. London: P. S. King and Son, 1917.

An exhaustive argument in favor of the continuation of the free-trade policy of the British Empire, by a member of the Senate of the Commonwealth of Australia.

WEBB, WALTER LORING. *Railroad Construction* (6th ed. rev. and enlarged). Pp. xv, 831. Price, \$4.00. New York: John Wiley and Sons, Inc., 1917.

This excellent handbook deals with all phases of railway construction from the standpoint of the practicing engineer. It not only presents in detail approved methods of modern construction practice, but indicates the economic justification for the methods. The former edition has been thoroughly revised and greatly improved by the addition of much new material.

T. W. V. M.

### ECONOMICS

ELY, RICHARD T.; HESS, RALPH H.; LEITH, CHARLES K.; CARVER, THOMAS NIXON. *The Foundations of National Prosperity*. Pp. xxiv, 378. Price, \$2.00. New York: The Macmillan Company, 1917.

As indicated in the sub-title, this volume is a collection of "studies in the conservation of permanent national resources." Each of the four authors deals with a separate topic: Professor Ely with conservation and economic theory, Professor Hess with conservation and economic evolution, Professor Leith with conservation of certain mineral resources and Professor Carver with conservation of human resources.

Professor Ely sketches the growth of the theory of conservation, particularly in the writings of economists, and lays the foundations for the other three studies of the volume. Conservation is broadly defined and the problem closely correlated with the distribution of wealth, from which it follows that "a wise conservation policy means wise property relations." Professor Carver with his usual vigor presents views that are for the most part familiar to those who are acquainted with his writings, especially his *Essays in Social Justice*. One of the most interesting and valuable chapters is the one on idleness as a source of waste. Professor Leith discusses coal, iron ore and copper, laying stress on the extent to which conservational measures already in operation in these three industries have been initiated by private enterprise for self-interest. He emphasizes the possibilities of further use of private control while at the same time urging strongly the importance of the sphere of public endeavor.

It is in the section by Professor Hess that the general theory of conservation is most fully and satisfactorily developed, although he limits his discussion to the natural agents of production. There are four periods of industrialization, i.e. those of exploitation, industrial development, industrial maturity and industrial regression. Each period has its characteristics and for each there is an appropriate conservation policy. In the earlier periods private proprietorship may not be incompatible with social interest but in the later ones there may be more divergence. Since there is a technical superiority of present over future goods, private proprietors must be spurred to saving by the offer of an interest

return as a reward for abstinence. But this may be inadequate to meet the social problem and consequently "it is the principle of *compound interest* rather than that of annual interest which must be applied to conservation finance." Much may accordingly be done for conservation through individual ownership, but there should be a gradual substitution of corporation management while "the formulation and execution of a comprehensive conservation policy is fundamentally a government function."

Such defects as the volume possesses are due largely to the joint authorship. Considerable space is given to some natural resources and comparatively little to others, e.g., lumber and water power. A few duplications occur in the development of argument but they are insignificant. The book is a valuable one and is a gratifying evidence that modern economists are not guilty of the criticism of the older writers as stated by Professor Hess (p. 118): "The rôle of labor and capital was relatively over-drawn and the industrial functions of natural resources were neglected."

E. M. PATTERSON.

*University of Pennsylvania.*

HOXIE, ROBERT F. *Trade Unionism in the United States*. Pp. xxxvii, 426. Price, \$2.50. New York: D. Appleton and Company, 1917.

This book is the result of an effort to reproduce as faithfully as possible the notes and lectures on Trade Unionism used by Robert F. Hoxie during his last year of teaching in the University of Chicago, and to combine with them some of his papers previously published. The task has been skillfully done and the result is a remarkably logical and coherent presentation of a vital phenomenon in present industrial relations. The exceptional equipment of Professor Hoxie is stated by Professor Downey in an introductory chapter in these words: "Trained originally in the straightest sect of cloister economics, he had the good fortune to escape its influence before his teachers had succeeded in dulling his appetite for reality. Falling next under the potent spell of Thorstein Veblen, he acquired the genetic standpoint, a wide acquaintance with cultural history, and an abiding interest in institutional development. After this varied apprenticeship he devoted himself for the space of more than ten years to an intensive study of American trade unionism."

The most valuable chapters in the book are perhaps those on general Character and Types, Present Union Groups, Industrial Workers of the World, Employers' Associations and the ones on scientific management and the opposition to it on the part of organized labor. The characteristic note of the book is its presentation of the subject in terms of structure and function and the laying of stress on the latter. Structurally, some six main forms of labor organization are shown to exist, while the real differences, which are functional, are seen in such types as business unionism, uplift unionism, revolutionary unionism, and predatory unionism, with varieties in both revolutionary and predatory unionism. The book is a distinct contribution to the literature of labor problems and should be of value to both the student and the general reader.

GEORGE M. JANES.

*University of North Dakota.*

SEAGER, HENRY R. *Principles of Economics* (2nd ed., rev.). Pp. xx, 662. Price, \$2.25. New York: Henry Holt and Company, 1917.

This revised edition is substantially the same as the 1913 *Principles of Economics*, and users of the older edition may feel a certain disappointment that more extended revision was not made. Twelve pages of new material have been added. These include the Underwood Tariff (pp. 397-8), a reference to Section 19a of the Interstate Commerce Act (p. 448), the Federal Trade Commission Act (pp. 473-4), the Clayton Act (pp. 474 ff.), the Amended Federal Income Tax Law of 1916 (p. 525).

C. H. C.

SMART, WILLIAM. *Economic Annals of the Nineteenth Century*. Second volume. Pp. xxii, 584. Price, \$6.50. New York: The Macmillan Company, 1917.

This volume covering the decade ending with 1830 was the final work of Professor Smart. It had been revised before Professor Smart's death and was presumably practically ready for the printer. Like other works by the author, it presents concisely and accurately material selected with scholarly judgment. Naturally the beginning and early progress of the free-trade movement in England receives much attention. The struggle between economic classes has so changed during the past hundred years that American economists have difficulty in giving as great importance as do English economists to the movement, which started in the third decade of the last century, for reduction of import duties on agricultural products. It is probable that economic histories of England for the first half of the nineteenth century written a century hence will give greater emphasis to subjects other than free trade. However, finance, taxation, navigation laws, industries, Ireland, speculation, labor legislation, railway beginnings, etc., each receive careful attention, despite the special emphasis given to the campaign to repeal or amend the "corn laws." No serious student of English economic history can neglect to study the two volumes of *Economic Annals* prepared by Professor Smart. It is to be regretted that he did not live to continue the work so ably begun.

E. R. J.

WOODBURY, R. A. *Social Insurance: an Economic Analysis*. Pp. x, 171. Price, \$1.25. New York: Henry Holt and Company, 1917.

This book performs a service that society desired about the time the New York Court of Appeals declared our first compulsory workmen's compensation act unconstitutional. At that time we needed a careful economic analysis of costs and burdens to establish the right of workmen's compensation to be. Its principles were new in the United States and it was hailed as a dream of social reformers. This book plunges straightway into such questions as the burden of accident cost, the point at which the burden falls, and the way in which the burden will affect capital and industry, wages, and the development of thrift; and finally the effect of workmen's compensation on the prevention of accidents. The disappointing thing is that it did not appear until 1917.



One has the feeling on reading the book now that it has outlived its usefulness before its appearance. For today the principles of workmen's compensation are scarcely open to question. Present problems deal with the perfection of laws—better adjustment of benefits, better administration, scientific determination of costs. The author's conclusion leads one to believe that it was written long before thirty odd workmen's compensation laws had been passed, before even the question of constitutionality had been settled with some degree of finality by the United States Supreme Court. Aside from the fact of its tardy appearance, it is a very careful and thorough analysis and will be of considerable value to the student of social insurance.

BRUCE D. MUDGETT.

*University of Washington.*

### POLITICAL SCIENCE

CORWIN, EDWARD S. *The President's Control of Foreign Relations.* Pp. vi, 216. Price, \$1.50. Princeton: Princeton University Press, 1917.

In this work Professor Corwin has given an illuminating presentation of one of the vexed questions in American constitutional practice. Fortunately for the students of the subject, he has reprinted two historical discussions relating to the power of the Executive over the foreign relations of the United States, viz., the early discussion between Hamilton and Madison in 1793, and the senatorial controversy between Senators Bacon and Spooner (1906).

The author has selected his material with great skill and discrimination, and as a result the reader receives a clear picture of the growing power of the Executive over foreign relations.

A particularly suggestive portion of the work is the chapter dealing with Executive agreements with foreign countries. The arrangements entered into by the President clearly demonstrate the far-reaching power which the Executive may exercise independently of the Senate. In a number of instances, notably the San Domingo protocol, the President proceeded in spite of the opposition of the Senate, entering into an arrangement which was not ratified until nearly two years after the original agreement had been effected.

L. S. R.

FISH, CARL RUSSELL. *American Diplomacy.* Pp. xi, 541. Price, \$2.75. New York: Henry Holt and Company, 1915.

Professor Fish has here presented in great, and sometimes needless, detail a history of the major part of the important political events in the foreign relations, not of America, but of the United States from June 16, 1775 to sometime in February, 1915. The title adopted for the work is essentially and unfortunately misleading. The book has very little to say about *American Diplomacy* and the author shows no evidence of having drawn to any appreciable extent upon the vast and rich stores of original source material in this broad field of politics, law, and history well known to be accessible even in one single country, the United States. A brief prefatory note, presumably written by the author, explains his

purpose to be to give "a comprehensive and balanced though brief review of the history of American Diplomacy" which "will help to diffuse a knowledge of our diplomacy at a time when it is becoming increasingly important that public opinion should be internationally minded." The book makes no claim to be, and very clearly is not "a contribution to knowledge, but rather a condensation of ascertained conclusions" drawn from some of the new and some of the old contributors to the knowledge of our foreign affairs. If the words "American Diplomacy" in the preface cited were replaced by the phrase "chief elementary facts in the foreign relations of the United States" it would pass as a fairly accurate characterization. The viewpoint, subject matter, and method of treatment are neither political nor legal, but historical. The work though absurdly comprehensive of minor details, such as relations with the North American Indians and "the West," manifests a serious lack of balance in the treatment of and emphasis given to certain important topics, periods, and personalities, suggesting a lack of digestion or assimilation of much of the secondary material absorbed by the author. Among many well-selected chapter headings unfortunately appear such unilluminating titles as: The West; Old Problems in New Hands; Routine, 1861-1877; Baiting the Lion, perhaps more appropriate to the novelist than to the historian. It is too bad that the great subject of arbitration, in which the United States has been one of the world leaders, has been tied up in a chapter on "Routine and Arbitration." It seems trivial in connection with serious faults in a history of important foreign relations or policies to mention such blunders as the confusion of the British island of Dominica with the Dominican Republic, or with the island of Santo Domingo or Haiti (pp. 327, 349, 363, etc.), or the reference (p. 26) to the well-known trading name of Caron de Beaumarchais as if it were a real and not a fake "commercial company," and then to misspell it as "Rodrigues Hortalie" instead of "Roderigue Hortalez." From this error, a simple glance into the ably-written precursor of his work, Foster's *A Century of American Diplomacy*, might have saved the author. At any rate, Stillé (who appears in Dr. Fish's own footnote, p. 26) or Loménie, not to mention original letters of Beaumarchais in Steven's *Facsimilies*, could have set the author right. One would get no idea, adequately or otherwise, from this book of the problems that beset America in the creation of her diplomacy owing to obstruction at home and abroad. The Commission to France, its actual composition, and agents, work, and squabbles, and relation to Congressional cliques, which all but wrecked the success of Franklin's labors in France, are left largely to an unstimulated imagination, while a chapter of ten pages is given to non-essential colonial topics in the period 1493 to 1764. One gets no further with the origin and importance of the "open door" policy than that it was once applied by John Hay. As a piece of literature the book is about as refreshing as The Sahara. But why particularise! It is no easy matter to write a good history of our foreign affairs, even of the elements of them, and we owe Professor Fish a debt for his industrious labor and the resulting compendium.

The author, notwithstanding errors too numerous to mention here and at times serious ones, has succeeded better than many of his predecessors. For what book is free from errors? To an extent he is a pioneer in his attempt to

produce a brief and comprehensive work. He has not failed in a most important objective. The book will do much to make Americans take an interest in this very vital subject. It has great value in the hands of a well informed teacher. It can be used and is used with profit by professors and students in university classes with other literature to supplement and correct it. The reviewer regards it as one of the best books of its kind that exists. It has six interesting maps and a good index.

JAS. C. BALLAGH.

*University of Pennsylvania.*

WALLACE, DAVID D. *The Government of England: National, Local, and Imperial*. Pp. xi, 384. Price, \$2.00. New York: G. P. Putnam's Sons, 1917.

It is the author's purpose "to describe the English government as it is without distracting the reader with a long account of how it came to be what it is"; also to avoid "the common habit of first describing the government as it is supposed to be in theory and then follow this with an equally detailed account explaining that it is not really this, but something very different."

In certain quarters both of these purposes will be regarded as revolutionary. As to the first, however, what Professor Wallace really undertakes is to use historical materials with greater brevity than his predecessors. Usually he is judicious in his brevity. Occasionally he seems to turn a corner somewhat too sharply as in the phrase (p. 23), "if the Commons persisted in demanding the passage of a law that the people wanted." His second purpose—that of avoiding detailed expositions regarding conflicts of theory and practice—is well maintained, although it also gives way occasionally as in his treatment of the "legally unlimited and potentially despotic power" of Parliament (p. 21).

It is invidious, however, to single out these minor points in a work so well conceived and executed as a whole. Professor Wallace's description of the government of England is lucid in style, well selected as to matter, and fertile in suggestive comparisons with American institutions. Of course many sweeping changes have taken place since the outbreak of the great war, changes which have not as yet run their course. Professor Wallace has not attempted to deal with such matters. Even so his presentation of the English constitution, in addition to its other advantages, is so much more up-to-date than any other text book that it is likely to be widely preferred for use in American college classrooms.

ROBERT C. BROOKS.

*Swarthmore College.*

## SOCIOLOGY

CHAPIN, F. STUART. *An Historical Introduction to Social Economy*. Pp. 314. Price, \$2.50. New York: The Century Company, 1917.

Professor Chapin has sought to present in this volume the background of the picture of social evolution as it effects the problems of modern social life. He presents our social economy as the natural produce of a continuous evolution

which he traces through (1) the Greek and Roman periods, (2) the industrial developments of the Middle Ages, and (3) the industrial revolution of modern times. His descriptions of the earlier periods are valuable mainly in the light they throw upon social processes. Descriptions of the revolutionary changes in agriculture, industry and communication serve to reveal the causative effects of these changes in social life. The result of the work is to show the historic reasons for both the motive and the method of "transition from remedial to constructive charity and preventive philanthropy." It is the type of book that strengthens confidence in the scientific formation of a rational and self-conscious social program.

J. P. L.

DETHDALE, C. V. *The Small Family System* (new and enlarged ed.). Pp. 1, 196. Price, \$1.50. New York: B. W. Huebsch, 1917.

This is a reprint of the 1913 edition with tables corrected to date and the addition of two new chapters on Progress since 1913 and The War and The Birth-Rate Commission. It is the best single volume in English devoted to the interest of Birth Control.

HUMPHREY, SETH K. *Mankind: Racial Values and the Racial Prospect*. Pp. xvi, 223. Price, \$1.50. New York: Charles Scribner's Sons, 1917.

"Mankind is divided into races primarily according to physical unlikeness; but dissimilarities of mental attributes and capacities are so closely associated with outward physical differences that they enter as important factors in distinguishing races one from another. Whether or not the mental attributes which have set up the White as the dominant race of the world were also once lodged with the Yellow, the Black and other inferior races, and gradually became lost through outbreeding during their milleniums of separation from the parent stock, is a question as unanswerable as it is unimportant. The outstanding fact is that they are not possessed of these attributes today." From this—alleged scientific—starting point the author has no trouble in demonstrating that the Anglo-Saxons and the Germans are easily the ablest race stocks today and that in the future it is a question which will survive and dominate. Germany is stained with a homogeneous population; America is handicapped by mongrel stock. Yet the United States, Canada, Australia, South Africa coöperating will win out if they eliminate the unfit and stimulate the multiplication of the highest types.

The author claims that less than one per cent of the people of any country really count, in so far as ability goes. Yet in discussing the present war he argues: "It is safe to say that among the millions killed will be a million who are carrying superlatively effective inheritances—the dependence of the race's future."

Mr. Humphrey is discussing most interesting and important topics. He speaks to prejudice rather than to fact, even though he seeks to outline a scientific basis, and his logic may be judged from the preceding paragraph.

C. K.

LEWIS, BURDETTE G. *The Offender and His Relation to Law and Society*. Pp. 382. Price, \$2.00. New York: Harper and Brothers, 1917.

A useful book from the hand of the Commissioner of Correction of New York City. It contains much valuable material rather loosely put together. The author is committed to the principle of specialization in the treatment of offenders, although, like most officials dealing with the practical application of criminal science, singularly prejudiced against the theory of pathology as a cause of criminal behavior. His chapter on classification is not clear, but the chapters on Probation, The Central Clearing House for Criminal Cases, and The Indeterminate Sentence are worthy of careful consideration by those engaged in correctional work. The volume contains much useful material concerning modern institutions of New York State for dealing with the problems of delinquency, including working plans and pictures. Part II, on the Prevention of Crime, contains much sound social philosophy and is especially recommended to the clergy, educators, correction officials and the police. On the whole, the volume is a useful addition to the literature of criminology.

P. A. P.

MACIVER, R. M. *Community, a Sociological Study*. Pp. xv, 437. Price, \$3.75. New York: The Macmillan Company, 1917.

"Wherever living beings enter into, or maintain willed relations to one another, there society exists. . . . Social facts fall into two great classes (a) social relations proper, and (b) social institutions. . . . By a community, I mean any area of common life, village, or town, or district, or country, or even wider area. . . . An association is an organisation of social beings (or a body of social beings as organised) for the pursuit of some common interest or interests. . . . The special sciences consider the special associational activities in themselves; sociology considers them as aspects within a common life." Add to these general statements the author's belief in the "unity that underlies all the forms of communal development" and his denial of the alleged contrast between the interests of the individual and society, and one will get a crude idea of his standpoint.

An analysis of community, is made in Book II, while the primary laws of the development of community are studied in Book III. "Socialisation and individualisation develop *pari passu*. The unity of these two factors is revealed in every life as well as in the whole they constitute, for that unity is personality. *The actual development of personality attained in and through community by its members is the measure of the importance they attach to personality both in themselves and in their fellow-men.*" Space forbids further exposition of this interesting position.

The author has made a real contribution to the literature of sociology. It has the great merit of being clear and logical. Dr. Maciver is fortunate both in the presentation of his own views and in his criticisms of various theories. The volume deserves careful consideration and may well be used as the basis of class discussions.

CARL KELSEY.

*University of Pennsylvania.*

YVES-GUYOT, M. *La Question de L'Alcool; Allégations et Réalités*. Pp. xi, 288. Price, 3 fr. 85. Paris: Librairie Felix Alcan, 1917.

LYMAN, EUGENE. *Alcohol: Its Relation to Human Efficiency and Longevity*. Pp. xi, 216. Price, \$1.00. New York: Funk and Wagnalls Company, 1917.

In the presence of increased agitation over the liquor problem, which has been out of war conditions, it is encouraging to note an increasing tendency to treat the question scientifically and dispassionately—an attitude all too lacking in former prohibition propaganda.

It is against just this extravagant and biased propaganda that M. Yves-Guyot has hurled his book upon the alcohol question.

His work, which he intends as a scientific and dispassionate analysis of the liquor problem, turns out to be a virulent attack on the prohibitionists, an attack which ignores some of the most significant evidence against the use of alcohol, and which is guilty of the very bias and exaggeration which he condemns. Basing his argument on the well-known experiments of Atwater and Benedict, he claims a high food value for alcohol. He then endeavors by statistical analyses to show that alcohol has none of the physiological and social evils ascribed to it, and that attempts at regulation and prohibition have failed of their object.

More careful in its tone is Dr. Fisk's work. Frankly convinced of the evil effects of even a moderate use of alcohol, he presents his reasons for this belief in a scientifically reasoned analysis. The author bases his argument upon the extensive experience of life insurance companies, and psychological and medical researches, which tend to show that the use of alcohol increases mortality and impairs bodily health. He has gone far toward gathering together the evidence that careful students of the liquor problem have long been seeking, viz., proof of the ill effects of moderate use of alcohol. By far the most important part of his work is his excellent summarization of recent psychological experiments carried on in the Nutrition Laboratory. Using only moderate doses of alcohol, these experiments have in the main confirmed the marked depressant toxic effect of alcohol established by Kraepelin's researches where large doses were used. There is thus an effective answer to the claim that alcohol is a food. Dr. Fisk's book is undoubtedly the best presentation of our present knowledge as to the physiological and psychological effects of alcohol that has been published.

RAYMOND T. BYE.

University of Pennsylvania.

REPORT OF THE BOARD OF DIRECTORS, YEAR ENDING  
DECEMBER 31, 1917, AMERICAN ACADEMY OF  
POLITICAL AND SOCIAL SCIENCE

I. REVIEW OF THE ACADEMY'S ACTIVITIES

The current year has demonstrated more clearly than ever before the importance of the national and international service which the Academy is in a position to perform. As the war proceeds, the necessity of keeping the public opinion of the country in close touch with every change in the development of national and international affairs becomes more and more apparent. This great democracy of ours cannot hope to meet the stupendous problems with which it is now confronted unless every agency, especially a national educational agency such as the Academy, devotes itself unremittingly to the enlightenment of public opinion.

It was this thought that led the Academy to inaugurate this year a series of national conferences, each devoted to some one aspect of the war upon which we have entered. The main purpose that the officers of the Academy had in view was to secure a nationwide interchange of opinion with reference to the policy which the country must adopt in bringing the war to an early and successful conclusion. In this work we have had the earnest and enthusiastic coöperation of civic organizations, chambers of commerce and other voluntary associations throughout the country. The discussions were participated in by men who have made a life study of the problems and the proceedings of these conferences were widely reported throughout the country. The Academy is especially indebted to Dr. Clyde L. King who organized the conference on the "World's Food Supply" and to Dr. E. M. Patterson who made the arrangements for the conference on "Financing the War."

During the past year, the publication activities of the Academy were pushed forward with unabated vigor. I hope that every member of the Academy realizes the magnitude of the problem which the Editorial Council is called upon to perform. To publish special volumes annually, each devoted to some question that is in the foreground of public attention, is no small task. A group



devoted men under the leadership of Dr. King have been giving their time and energy to the purpose for no compensation other than the satisfaction of performing a public service. It is no exaggeration to say that through these six volumes, which are placed in the hands of the members of the Academy, they are able to keep in close touch with the progress of national and international affairs.

During the past year we have again had requests from a number of our members to undertake the organization of local centers in different parts of the United States. Your Board has called attention to this question on several occasions and feels that it is only a question of time when the Academy will have to undertake such a plan. This will involve a far more elaborate organization than we have at the present time and will add very greatly to the responsibilities of those directing the Academy's work.

Your Board again desires to call attention to the pressing need of an Endowment Fund, which will enable the Academy to conduct investigations on a much larger scale than has heretofore been possible and will also enable us to secure the Academy building of which we stand in such great need.

## II. PUBLICATIONS

During the year 1917 the Academy has published the following volumes:

January—The Present Labor Situation

March—Modern Insurance Problems

May—Stabilizing Industrial Employment

July—America's Relation to the World. Conflict and to the Coming Peace

September—Justice Through Simplified Legal Procedure

November—The World's Food

## III. MEETINGS

During the year 1917 the Academy has held the following meetings:

January 27—Railways and Railway Law as Affected by the Eight Hour Law

April 20-21 (21st Annual Meeting)—America's Relation to the World Conflict and to the Coming Peace

September 14-15—The World's Food  
 November 2-3—Financing the War

#### IV. MEMBERSHIP

The membership of the Academy on the 31st of December, 1917, was 6,263, with a subscription list of 1,052. Of the 6,263 members, 1,426 are residents of Philadelphia, 4,587 of the United States outside of Philadelphia, and 250 foreign. Of the 1,052 subscribers, 7 are from Philadelphia, 943 from the United States outside of Philadelphia and 102 foreign. Compared with the membership on the 31st of December, 1916, we find that in the Philadelphia membership there is a gain of 98; in the membership in the United States outside of Philadelphia 296, and in the foreign membership 3, or a total of 397. This is a gain of 53 in membership over the year 1916. In the subscription list there is a gain of 3 in Philadelphia, 110 in the United States outside of Philadelphia and 15 in foreign or a total gain of 128. The total gain during the year 1917 in the combined membership and subscription lists is 525.

During the year the Academy has lost through death 55 of its members, one of whom was a life member.

##### *Foreign*

T. Matsumoto

##### *Philadelphia*

Miss F. Brown  
 Denis A. Hayes  
 J. A. McKee

Arthur J. Meredith  
 Fred W. Simmons  
 F. B. Wooley

##### *Outside*

Fred J. Allen  
 John D. Archbold  
 Hon. John H. Baker  
 W. E. Barns  
 Alfred D. Barnard  
 H. C. Beck  
 Lester M. Bloch  
 Hon. Boucher de La Bruère  
 Hon. Sam Cohn  
 Chester A. Congdon

Dr. Henry Ferguson  
 James L. Glase  
 Hon. G. W. Guthrie  
 E. W. Hammer  
 Henry O. Harris  
 N. W. Harris  
 F. R. Hazard  
 Dr. Henry D. Holton  
 William B. Hurst  
 Frank Jacobs

George L. Jewett	Benjamin F. Pabodie
Dr. Geo. Ben. Johnston	Will H. Parry
Bryan Lathrop	Frederic H. Reed
Hon. Preston Lea	H. J. Schumacher
Rabbi J. Leonard Levy	Isaac N. Seligman
Major E. C. Lewis	Rt. Rev. F. S. Spalding
Hon. David Mackeen	A. A. Stevens
Martin A. Marks	Edw. R. Taylor
T. F. McCrickett	J. P. Taylor
J. Charles F. Merrill	J. K. Turner
Thomas P. Merritt	George Thompson
Howard D. Newton	*Charles J. Willett
W. A. Northcott	Sidney M. Winslow
Richard Olney	W. S. Witherbee

The death of these members has deprived the Academy of some very warm friends and enthusiastic workers.

During the year the Academy has lost by resignation 499 of its members and 9 subscribers, while 951 members and 137 subscribers have been added to the list.

In addition to the resignations and deaths there are being held for two years to June 30, 1916, 101 members and two years to June 30, 1917, 126 members for non-payment of dues. This would reduce the membership to 6,036 and make the total gain 170 in membership.

#### V. FINANCIAL CONDITION

The receipts and expenditures of the Academy for the fiscal year just ended are clearly set forth in the Treasurer's report. The accounts were submitted to Messrs. E. P. Moxey and Company for audit and a copy of their statement is appended herewith.

In order to lighten the burden of expense incident to the Annual Meeting as well as to the conferences on the World's Food and Financing the War, special funds amounting to \$2,415 were raised. These funds are as follows:

Annual Meeting . . . . .	\$1,575
Food Conference . . . . .	295
Finance Conference . . . . .	545
	<hr/> \$2,415

\* Life member.

The Board takes this opportunity to express its gratitude to the contributors of these funds.

## VI. CONCLUSION

During the past year the officers of the Academy have been unremitting in their efforts to develop closer personal relationship between members of the Academy. Through such coöperation the Academy's national influence will be greatly strengthened. It is our hope during the year 1918, still further to stimulate this coöperation. Every step in this direction enables the Academy better to perform its service to the nation.

January 17, 1918.

CHARLES J. RHOADS, ESQ., TREAS.,

*American Academy of Political & Social Science, Philadelphia,  
Pa.*

Dear Sir: We herewith report that we have audited the books and accounts of the *American Academy of Political & Social Science* for its fiscal year ended *December 31, 1917*.

We have prepared and submit herewith statement of receipts and disbursements during the above indicated period, together with statement of assets as at December 31, 1917.

The receipts from all sources were verified by a comparison of the entries for same appearing in the Treasurer's cash book with the record of bank deposits and were found to be in accord therewith.

The disbursements, as shown by the cash book, were supported by proper vouchers. These vouchers were in the form of cancelled paid checks or receipts for moneys expended. These were examined by us and verified the correctness of the payments made.

The investment securities listed in the statement of assets were examined by us and were found to be correct and in accord with the books.

As the result of our audit and examination we certify that the statements submitted herewith are true and correct.

Yours respectfully,

EDWARD P. MOXEY & Co.,  
*Certified Public Accountants.*

# REPORT OF THE BOARD OF DIRECTORS

325

Balance Cash on Hand January 1, 1917..... \$5,855.33

## Receipts

Members' Dues.....	\$25,282.77	
Life Membership.....	100.00	
Special Donations.....	2,405.00	
Subscriptions:		
Individuals.....	\$277.93	
Agents.....	3,259.43	
Libraries.....	457.29	3,994.65
		<hr/>
Sales of Publications.....	5,005.61	
Interest on Investments.....	4,719.77	
Sundries.....	51.15	41,558.95
		<hr/>
<i>Total Receipts</i>		<b>\$47,414.28</b>

## Disbursements

### Office Expense:

Office Salaries.....	\$4,253.12	
Supplies and Repairs.....	1,169.90	
Stationery and Printing.....	446.13	
Telephone and Telegraph.....	43.78	
Postage.....	424.43	
Freight, Express and Carfares.....	9.00	
General Expense.....	1,143.26	\$7,489.62
		<hr/>

### Philadelphia Meetings:

Salaries.....	\$1,333.99	
Hall Rents.....	770.00	
Stationery, Engraving and Printing..	1,721.84	
Clerical Services.....	135.92	
Expense of Speakers.....	1,279.23	
Postage.....	378.02	
Telephone and Telegraph.....	91.98	
Carfare, Newspapers, and sundries ...	109.53	5,820.51
		<hr/>

### Publicity Expense:

Salaries.....	\$1,316.13	
Pamphlets, Cards, and Advertising ...	416.23	
Postage.....	750.57	
Stationery, Supplies and Repairs.....	1,072.42	
Telephone.....	11.97	3,567.32
		<hr/>

Publication of *Annals*:

Salaries.....	\$3,301.29	
Printing.....	14,663.00	
Reprints.....	771.34	
Binding.....	345.70	
Postage.....	1,333.33	
Advertising.....	45.00	
Stationery and Supplies.....	928.16	
Freight, Express, Carfare and Sundries	269.77	
Telephone and Telegraph.....	115.96	
Storage and Insurance.....	12.69	21,786.24

Investments Purchased.....	5,000.00	43,663.69
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Balance December 31, 1917.....		\$3,750.59
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## ASSETS

Investments (book value).....	\$100,505.77
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## Cash:

In Academy Office.....	\$300.00	
In Treasurer's Hands:		
Centennial National Bank.....	200.00	
Girard Trust Company.....	3,250.59	3,750.59
		<u>\$104,256.36</u>

## LIABILITIES

None

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# SOCIAL WORK WITH FAMILIES

## SOCIAL CASE TREATMENT

### The Annals

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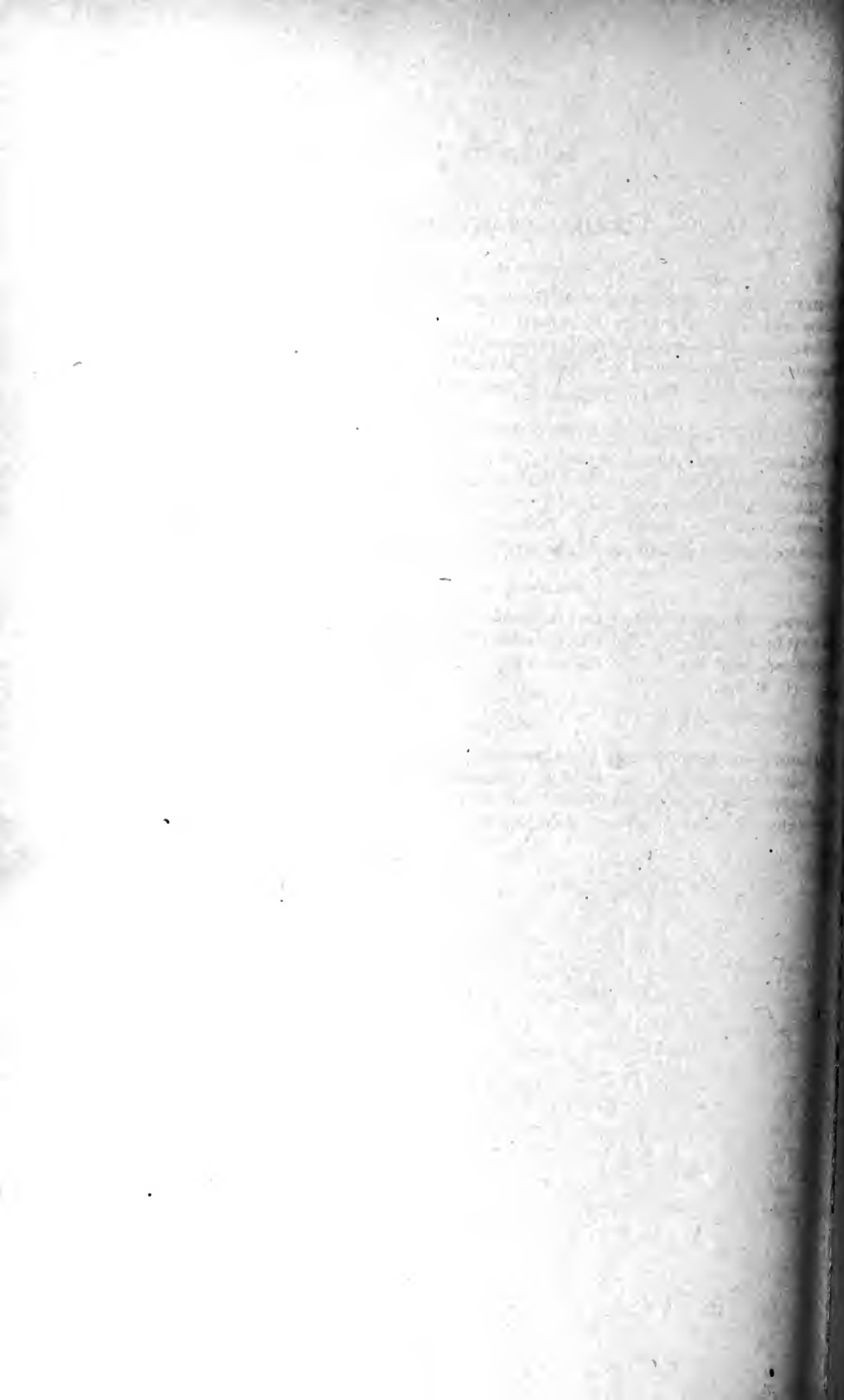
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## FOREWORD

The development of the principles and methods of social case work has been a slow and almost unconscious evolution. Only recently have social case workers become articulate in the technique of their field. They have been such "deadly doers" that little time has been left to analyze critically the technique of the day's work. Miss Richmond's book, "Social Diagnosis," is monumental not only because of its scope and scholarship but because it marks the beginning of that painstaking analysis of the methods and principles of social case work which must obtain generally before social case workers can call their chosen field a profession. Miss Richmond's book deals exclusively with social diagnosis, treatment being omitted except in the sense that all diagnosis is a part of treatment. A volume on Social Case Treatment is therefore opportune, especially in view of the urgent need at this time of an authoritative statement of the best thought and practice in the field of treatment, because of the many social problems incident to the war. While the war may have created no new type of social problems, it has increased them many fold and has given some entirely new settings. The inevitable dislocation of industrial life with its migrations of workers, the disruption of family life in many homes following the departure of the father or son for war service, the readjustment to industrial life of the soldier returning from the front, possibly crippled, or handicapped by blindness, all make a knowledge of the principles and methods of social case treatment of paramount importance.

It is hoped that the present volume in addition to being of interest to the general reader will prove not only a reference book to which social case workers generally may turn for new light on some of their oldest problems but that it will also serve as a storehouse of knowledge based on tested experience for all Home Service workers and all those other workers, professional and volunteer, who have been drafted in the ranks of social case workers because of the unprecedented demand for this type of work incident to the war. It should never be lost sight of in this connection that the problems of "civilian relief" differ in no essentials from the problems which social case workers throughout the country have been meeting in their



day's work before the war and that the methods of helping to solve them differ in no essential details from the methods followed in the past by the best of our case-working agencies. Human nature does not change over night nor during a war. The big problems of a widow's family are the same, whether the husband has lost his life in the military or industrial army. The readjustment of a man to industrial life is much the same, be he crippled by a bursting shell or by a bursting fly wheel in the factory. Questions of care for orphaned children are much the same be the cause of their orphanhood sickness and anxiety incident to war or death following occupational disease.

While certain articles like that by Miss Hamburger on "The Cripple and His Place in the Community," that by Miss Wright on "Off-Setting the Handicap of Blindness" and that by the Director-General of Civilian Relief on "Soldiers' and Sailors' Families" may seem to have more direct bearing on the problems of the Home Service worker, it is felt that all the articles throw light on problems with which Home Service workers will sooner or later have to deal. In fact the principles and methods of social case work are universal in their application. Not only is the corner-stone of all case work,—individualization of treatment,—revolutionizing the science of penology, but it is profoundly modifying our educational practice. Small classes, more frequent promotions, special classes for the backward and for the handicapped as well as the movement for industrial education, all reflect the growing recognition among educators of the principle of individualization. Even in our home life, we must use this principle if we are to understand the developing life of our own children. Come what may in the future evolution of our social life, this principle will stand as vital, and the time and thought and patience that are put into this delicate work will receive more and more recognition as the parent, the teacher and the social worker can show the results that come from its application.

A volume on social case treatment covers but a section, though an important one, of the whole field of social work. The unity of social work is such that the effectiveness of any program of social workers is materially affected by the quality of work done in any part of the field. All good social case work has a double value. It not only makes possible work with a given individual or family, helping them to solve their own problems, but with its first hand knowl-

edge of social and industrial conditions and of the action and reaction of environment and heredity, it affords a valuable fund of information for scientific research and thus lays the foundation for effective propaganda looking toward the creation of an intelligent public opinion which is important for all wise legislation and essential for all effective law enforcement. Social case work when well done is therefore not only constructive but preventive as well, both for the individual and for society.

The articles in this volume have been divided into three groups: those which afford an approach to social case treatment; those articles which discuss social case work with the physically or mentally handicapped; and those articles which deal with social case work with the socially handicapped. The last article in the first group, "The Normal Family," affords a perspective for all workers with family problems and so adds materially to the value and unity of the volume. While there is no fundamental difference in the technique of social case work as found in the various articles, they do exhibit some adaptations in case work technique that are of significance.

Certain points of view characterize all or almost all the articles. The many references to the war show what a big place this cataclysm is occupying in the thoughts of all the writers. Almost all the articles breathe an impatience with the point of view that a social case worker's job is done when the individual or family in question has been helped. There is a sense of humility pervading the articles, though each is written by one chosen for his or her wide experience in social case work in his or her particular field. The thought constantly recurs that workers in each field are still breaking new ground. All the articles reflect a great truth which is constantly borne in on all social case workers but often missed by those who believe that any one panacea can remedy all our social evils. This truth is that the causes of our various social problems are exceedingly numerous, varied and complex, subtle of analysis and difficult of appraisal and that the solutions of these problems are as many and varied as the causes themselves. This may prove disquieting to some. It nevertheless remains true that there are few if any short-cuts in the field of the social sciences and that a sympathetic understanding of the complexity of our social life is the first step in all real progress.

FRANK D. WATSON.

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## THE OPPORTUNITIES OF SOCIAL CASE TREATMENT

BY KARL DESCHWEINITZ,

General Secretary, Philadelphia Society for Organizing Charity.

The door of the examining room opened and two young men came into the recruiting office, each with a slip of paper in his hand. They looked about uncertainly for a moment; then catching sight of an "information" sign, walked over to the desk which was thus labeled. The soldier who sat behind it glanced at the memorandum that the first man handed him.

"You've a double hernia," he announced.

"Same with you," he added, turning to the second volunteer.

"You can't enter the army unless you have it fixed," he continued, addressing both of the young fellows who apparently desired further information.

"Here, I'll give you the name of a hospital where you can have an operation for nothing. If you weren't going into the army it would cost you \$120."

He scribbled the address upon the back of the memorandum.

"Even if I wasn't going into the army I'd have the operation. I wouldn't go around with a thing like that for anything. Why you're liable to wake up some morning and find yourself dead."

The soldier paused, but not long enough for a reply.

"There's nothing to the operation. I've assisted at hundreds of them in the military hospital. It doesn't amount to much more than taking an anesthetic. I've seen men up and about in eight days. It won't cost you a cent and if you want to get into the army it's the thing to do."

The first young man looked at the second. "Come on," he said and picked up the slip with the address of the hospital upon it. Together the two volunteers left the office.

Admit that the soldier urged a course of action without having any fundamental knowledge of the needs of those whom he advised. Admit that his method of doing this was crude. He nevertheless was following a procedure that should be most suggestive for those who are interested in the development of social case treatment.

The men came to him in a predicament. That is precisely what brings people to the case worker, whether the predicament be called trouble, distress, a situation or misfortune; whether it be a prison record, truancy, poverty or sickness; whether the case worker be a representative of the court, the children's society, the society for organizing charity, or the hospital social service department.

What the soldier did and what the case worker must do are basically the same. The soldier, first of all, told the men just what their predicament involved;—they could not enter the army because they were suffering from hernia. Second, he pointed a way out of the difficulty—the hospital. Third, he suggested various motives which might help the men to take that way. He appealed to their sense of economy, or rather to that fundamental desire to get something for nothing which seems to be part of everybody—"If you weren't going into the army (the operation) would cost you \$120." He aroused their sense of fear on the one hand—they might wake some morning and find themselves dead—and he allayed it on the other—the operation "doesn't amount to much more than taking an anesthetic." Study of almost any record of successful case treatment will show a procedure similar in its rudiments to that which the soldier observed.

Consider, for example, the predicament of the family of Herbert Jones. They were without food. Nearly all of their furniture had been sold. Mrs. Jones and one of the children were sick. Mr. Jones was out of work. He had been arrogant toward his fellow workmen, so arrogant that the union to which he had belonged was unwilling to help him. He was drinking heavily. He abused his wife and had been brought at least once before the Domestic Relations Court. The case worker discovered that Mr. Jones was an extremely sensitive man who craved friendship and affection. As often happens with such men his arrogance was the unfortunate result of fear of injury to his feelings and of his unconscious efforts to protect himself. He had taken to drink because he thought that in that way he could become a good fellow among the men of the neighborhood. He abused his wife partly because of remorse for his intemperance and partly because he was jealous of what he thought was her too great devotion to two children whom she had had by a former marriage.

The first step in treatment was to show the man and the woman

what was involved in their predicament. The case worker interpreted the husband to the wife, helping her to see that the man's abuse and his jealousy were really caused by his affection for her. Next came the suggestion that, were the source of irritation to be removed, the family life could become happy once more. The way out lay in an arrangement to have the stepchildren live with their grandparents, and the woman's desire for a happy association with her husband provided the motive for doing this.

With the man, treatment involved a frank facing of the facts of his situation. His baseless jealousy and the unpleasant effect which his arrogance had upon those who knew him were made plain to him. His predicament was himself. The remedy lay in a struggle against himself. The social worker offered him assistance in this struggle. His home would be reestablished. His wife would be helped back to health. The union officials would be placated so that he could once more obtain work. The motive suggested to the man was the possibility of achieving the kind of family life and companionship among his fellows for which he longed. Accompanying this was the encouragement and the sense of assurance afforded by the interest of the case worker in his welfare.

The method of treatment here was precisely the method of the soldier in dealing with the two volunteers. First, the case worker showed the family what was involved in their predicament, second, she pointed to the way out, third, she supplied a motive.

Often the steps in this method follow each other so closely as to render analysis almost impossible. Thus the realization of the predicament may furnish the motive. Again, the man or the woman may have decided upon the remedy but may need motivation; or realizing their predicament they may need both a way out and a motive to inspire them to take that way.

A teamster who liked horses too much to want to learn how to operate a motor-truck, found himself reduced to such odd jobs of driving as he could find. Gradually he became accustomed to irregular work until unemployment became a habit. He realized what was wrong but knew no remedy, and even if he had known one he lacked initiative enough to lift himself out of his predicament. The solution lay in a job on a stock breeding farm and the motive which led him to take this solution was the adventure of going to a new and a rural environment.

Although it may not always be necessary to show a man either directly or by implication the elements of his predicament it is essential, of course, for the case worker to understand them. This means investigation, and after investigation diagnosis. The method of investigation is well defined. The importance of the first interview, the value of seeing relatives, former employers, and the other factors in this phase of case work are admitted. Social workers, however, must do more than follow these steps. They must take them without for a moment forgetting that the end of investigation is diagnosis and that diagnosis is the beginning of treatment. Treatment depends for its success upon an investigation conducted with this in mind.

Diagnosis, moreover, is made primarily, it should be remembered, for the benefit of the person under treatment, not for the information of the case worker. Here, again, inspiration and suggestion can be obtained from study of the methods of the medical profession. The tendency among physicians, evidenced by the increasing stress which is being laid upon personal hygiene, is to make the patient understand his trouble in order that he may adjust his life so as to overcome his disease—of course, with the help of what therapeutic or surgical assistance may be necessary. This also must be the method of social case treatment.

The way out or the ways out which are opened to the family or the individual after they have been shown the implications of their predicament are really opportunities to develop the kind of personal equipment and environment that will enable them to reestablish themselves. The job in the country was not the solution for the teamster who had acquired the habit of unemployment. It was merely the offering of a new environment in which he could reach the solution. The solution itself lay in the development of character, of the habit of industry, of a greater measure of initiative. The removal of the stepchildren to their grandparents and the obtaining of a job for the man who had been abusing his wife was not the solution. He had had many different jobs before and conceivably the stepchildren might have left his home without producing the desired result. The ultimate solution lay in his victory over himself. The job and the change in domestic arrangements served merely to provide him a more favorable environment.

The elements involved in securing such an environment and in



making possible the development of a better personal equipment are as well defined as are the processes of investigation. They are health, education, mental hygiene, home economics, work, play, spiritual influence. These things are the means which the case worker uses in administering social treatment. They must not be considered as ends in themselves but only as influences in helping the family and the individual to readjust their lives.

Case work agencies which in their annual reports list the number of people for whom they have obtained jobs or hospital care tell only a small part of the story. Indeed, better case work is implied when a man secures employment for himself than when the social worker finds the job. The purpose that the job or the other element in treatment is to serve is the important consideration. Thus, a family is persuaded to move to another neighborhood in order that the oldest boy may be better able to resist the temptation to join a street gang. The boy is invited to become a member of a settlement club so that he may be provided with a legitimate outlet to his desires. His mother is induced to take more care in the keeping of the house that he may find the home more interesting. The school teacher is asked to find what studies appeal most to the boy in order that opportunity for development in a congenial direction may be given to him. These efforts are all designed to enable the boy to grow to be a useful citizen. They are not ends in themselves, desirable though they may be.

Again, the administering of social case treatment does not mean that the case worker must fulfill the function of nurse, teacher, clergyman, or housewife. To open the opportunity of health to a man one need not be a physician or do the work of a physician. Recognizing the importance of health to the well-being of the individual, the case worker's task is to help the family to realize this also, and then if necessary to suggest the place where the essentials of health may be obtained. Similarly, the case worker by introducing the clergyman or the friendly visitor endeavors to provide the spiritual and personal influence which her diagnosis shows that the man, or the woman or the family needs. It is not necessary for the case worker to be able to teach a housewife how to cook or to scrub. Case workers have scrubbed floors and cooked meals for families under treatment, but when a case worker has done this it has not been for the purpose of teaching the family how to do these

things but for the influence which such an action might have upon her relationships with the household.

This must not be understood to be an underestimating of the importance of health, education, mental hygiene, work, play, home economics and spiritual influence as ends in themselves. To obtain them is so important that more and more attention must be focused upon them if social case treatment is to realize its opportunities. Indeed, it is most desirable that effort be made to change the method of recording case work in order that the need for these things may be emphasized even more clearly. Porter R. Lee has criticized the case record as being too much a diary of how the case worker has spent her time and too little a statement of facts upon which treatment is being based. It might well be rearranged so as to segregate the various steps that are necessary to develop the personal equipment and the environment of the family under care. Thus the case worker in looking over the reports of her work would be able to see at a glance whether or not the need for work, play, health, and the like had been supplied.

The opportunities which may make it possible for the individual to readjust his life having been pointed out to him there remains the last element in social treatment—motivation. Often the strongest motive operating upon a man is the misery of his own predicament. This motive may be the knowledge that someone cares, that there is someone interested in seeing him make good. There is not one of the myriad impulses which influence men to action that the social worker is not called upon to use. The supreme art of treatment is knowing what motive to use in a particular situation. Perhaps the best preparation for a proper choice at such a time lies in a study of the daily experiences that mark the course of case work. What is it, for example, that caused a family to become self-supporting after years of dependence on the gifts of neighbors? Why is it that a man who has been a drunkard since his youth suddenly decides not to touch alcohol again and holds to his decision? What has caused a woman who has neglected housekeeping to take a new interest in the care of her home? What induced the truant to return to school, the deserter to support his wife, the consumptive to go to the sanatorium which he had been resolved to see no more? Study in other fields should also prove suggestive. Whatever vocations have to do with the art of dealing with people can make a con-

tribution to case work. The teacher, the neurologist, the student of the psychology of behavior, the salesman will all be of help.

Perhaps of these the art of the salesman seems to be the most remote from that of the social worker. Yet the underlying philosophy of his method is the same as that of the person who is trying to help families. The salesman's effort is to make the prospective customer conscious of his need of the article that is to be sold. Having created a demand, or if one exists already, having called attention to it, the salesman shows that his goods will fill that demand. Then he clinches his order by giving reasons why the customer should buy, and buy immediately. Thus he uses the predicament, sometimes artificially constructed, the way out and motivation. The psychology of salesmanship has indeed many suggestions for the case worker. One suggestion, however, it must not have. That is the conception of compulsion. The salesman is obliged to bespeak his goods with all the energy at his command. He wants the customer to take his, i.e., the salesman's way out. The case worker, on the contrary, does the best work when, having faced a man with the facts of his situation, she urges him to plan his own way out. Only when the man is unable to suggest a plan of his own does the case worker propose a remedy. When possible, she suggests several remedies so that in making a decision the man has a choice.

Moreover, the days when the case worker forced her opinion upon a family are passing, if indeed they are not already past. Is not the use of discipline in the withholding of relief often a confession of the inability of the worker to suggest motives that will encourage a man to act for himself? The best social case worker is she who has the greatest faith in people and in their right to make their own decisions. The more nearly motivation becomes not a forcing of the will of the case worker but an inspiration and encouragement by her to the man after his decision has been made, the more it approaches the true ideal of social case treatment.

The art of social case treatment, then, is threefold. It starts with making clear to the family or the individual the nature of the predicament and what that predicament involves. It continues by showing a way or ways out of the trouble and it concludes by appealing to the motives which will help the person to decide to master his predicament and to carry out that decision.

The opportunities for social case treatment lie in the recognition

that such a thing as social case treatment exists, and that it is for the purpose of social case treatment that investigation and diagnosis are made. The development of social case treatment depends largely upon the interest with which case workers analyze their own work and profit by experience in allied fields. They may, indeed, learn much from such examples as that set by the soldier in the recruiting office. His success, crude and unpremeditated though it was, is suggestive for the future of social case treatment.

## CASE WORK AND SOCIAL REFORM

BY MARY VAN KLEECK,

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The case worker is authoritatively defined as one who plans different things for different people. The social reformer, considered as one concerned with movements rather than individuals, aims to secure an identical benefit for an entire group. The case worker fixes attention on the individual. The social reformer devotes his energies to the conditions of the community. In interests, immediate purpose, method, and even in spirit and philosophy, the two would seem to be far apart. Far apart they sometimes seem to each other. The social reformer accuses the case worker of blindness in attending exclusively to the immediate task ahead,—patching up his neighbor's affairs without changing the conditions which have caused his misfortunes. To the case worker, on the other hand, the social reformer seems sometimes to be a dreamer, thinking about a changed order and neglecting the people who now suffer from it, and who must be reckoned with in an effort to change it.

To the outsider these distinctions would probably seem to be a mere quibble, lacking in significance, or at best merely a portrayal of contrasts between two types who must together make up a world. To the social worker, however, it frequently becomes a practical question how most wisely to proportion the emphasis given to the mass movement and to the individual in trouble. In social work as a whole, if we may view as a whole so diverse and complicated a set of activities, a fruitful relationship between the two types of effort is a practical necessity. The case worker must be blind who can see no possibility of social and organized effort to change the conditions surrounding one individual after another whom he aims to help. The social reformer who does not draw his conclusions from the actual experience of individuals is in danger of being an unsafe guide in social action.

Granted, however, the necessity for a two-fold view of the individual and the mass if progress is to be made, practical questions

arise as to how this relationship can be achieved. The word "co-operation" is not enough. Its terms need analysis in connection with the concrete tasks which the social case worker, or a reformer of conditions, has set for himself. Two of these large tasks may serve as illustrations,—the public health movement and industrial reform. Certainly sickness and a low standard of living would be regarded as giving rise to a large proportion of the problems of the social worker.

Health, or the lack of it, has made necessary the care of the sick as individuals, institutions caring for groups, official departments to protect the community, educational campaigns to train individuals in the care of their own health, and bodies of laws establishing safeguards, or controlling conditions, such as quarantine regulations or sanitary codes. The social and economic effects of sickness have resulted in plans for health insurance, which marks a new phase of effort in the health movement. The health movement in its social aspects is a part of social work, broadly conceived. In its medical aspects it affords an illuminating parallel. Medical research is to the practicing physician what social research should be to the case worker. Individual experience should be both a source of information and a goal of effort. Facts gathered in daily practice may be the basis of laws which in turn are a guide in daily practice. The case worker is both an observer and a practitioner. The social reformer may be a research student studying the laws of social relationships or a propagandist,—a practitioner for communities instead of for individuals.

The health movement, like other social effort, has three main branches: research for the discovery of knowledge; education, including the training of individuals and the dissemination of knowledge; and reform, or the change in conditions producing disease. It is significant that neither the case worker nor the social reformer would wish to be denied a share in any of these three branches of effort. Each of them, too, has its starting point in individual experience, while the individual is the final test of achievement of the ends sought.

The effort to prevent tuberculosis is a good illustration. Medical research showed this to be a disease curable and preventable largely through education of individuals and through control of their environment. Thus its cure and prevention are essentially

tasks for the joint efforts of case workers and social reformers. Certainly organizations concerned with individuals and families have had an important share in the development of general educational work, and in the establishment of sanatoriums. On the other hand, social reform in relation to the prevention of tuberculosis, which we think of as including both public education and efforts to improve working and living conditions, has established a certain foundation for case workers.

In the prevention of tuberculosis, however, as in all other public health work, neither case workers nor social reformers have finished their tasks and it is the unfinished task which challenges them to more united effort. Tuberculosis is essentially a disease of poverty, fostered by under-nourishment, by congested quarters for living, by long hours of work, by dust in workshops, by lack of fresh air, good food, and exercise. The accumulated experience of all the case workers, if it were really to be made to appeal as it should to the public imagination, would be an irresistible force in changing for the better the present conditions of life and work. One reason why the task continues to be unfinished is that the individual experience is not made to count as it should in social reform.

The same lack is illustrated in industrial reform, and the many obstacles in the way of its accomplishment. It is a temporary or permanent inability to maintain a normal standard which constitutes the characteristic problem of the case worker. Thousands of case workers in many parts of the country are trying to see the way out in this problem as it recurs day after day. It is met in good case work by the establishment of new relationships for the individual, or the vitalizing of old ones, and by a general sharing of burdens, as well as by a new stimulus to the individual. The apportionment of burdens, however, is not always clearly appreciated. The time is not long past when charitable societies and relatives bore the whole economic burden of industrial accidents. Now in many states, in Workmen's Compensation Laws, it has been recognized that industry must meet the consequences of its own hazards. Health insurance is advocated for the same reason,—to bring about a more just apportionment of burdens.

The significant fact about health insurance in relation to this discussion of case work is that case workers have contributed so



little to the movement, either in the way of warning or reinforcement. Full realization of what sickness means as a cause of poverty should have led long ago to a far more effective organization of the community for preventing sickness and for dealing with its results. On the other hand, the case worker, with a knowledge of all the complicated factors which are involved with sickness as a cause of poverty, could check too great optimism as to the probable results of any one plan of reform. The case worker can contribute information to social reform, and to this end careful records and frequent and regular interpretation of their meaning are obviously necessary. But case workers can contribute something much more important and somewhat rare,—a constructive imagination. Just because they deal so constantly with real conditions, they may be in danger of growing accustomed to them and forgetting any possibility of change. Case workers cannot be content with accepting the established standards of the community, if they are to contribute their share of planning and acting to bring about desirable changes. But the social reformer in contrast must be watchful of a tendency to forget that a plan is not enough, and that it must bear some relation to established standards and the accustomed habits of mind in the community.

The war, with the violent changes which it produces in national life, demands the constructive imagination in social work. The goals of effort in the past seem to be swept away. Those whose work has been the precise carrying forward of a program are aghast at the apparent destruction of the things for which they have struggled. Change in purpose which becomes inevitable seems to be a compromise in principle. Rehabilitation of family life is now opposed by the nation itself, whose demands show a claim greater than family life. Social reform seems to be a mockery when all effort for individual welfare must now be subordinated to the national good. Yet a new conception of the national good and a new organization of forces for achieving it, may be the great opportunity for a new conception of individual welfare,—the immediate interest of the case worker, and community welfare,—the goal of the social reformer.

## THE NORMAL FAMILY

BY MARGARET F. BYINGTON,

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There is in history nothing more dramatic than the persistence for uncounted generations, through changes in industrial life, through experiments and failures in political organization, through the growth, decay and rebirth of religions, of the essential family unit—

"Oh 'im and 'er and it,  
Our blessed one in three."

as Kipling phrases it. There has been variation enough indeed in the relation between the man and the woman, a relation which has sometimes been considered purely temporary, sometimes eternal. Underneath all these changes, however, we find the persistence of the essential bond, the physical dependence of the child on the fostering care of the mother and the reliance of both on the greater energy and courage and physical freedom of the father for protection and for sustenance.

The family as a unit has indeed functioned in many ways during these centuries; it has been the religious unit, especially in ancestor worship, the father serving as priest; it has been the property holding unit to which the right of inheritance was limited; it has been the industrial unit, the household forming a coöperative enterprise; it has been the educational unit, the custodian of the earlier experiences of the race; it has provided for the physical nurture of the child. It has varied in form and in legal status, moulded by changing industrial, social, and religious life. It has likewise been a factor of great value in securing stability of progress, on the one hand by preserving the traditions and experiences of the past, and on the other, by securing within the shelter of the home the chance for greater variability. If we are to understand the modern family we must see it in its relation to this historical development. By noting which characteristics of family life have persisted through these changes, which have weakened and which grown stronger, we get a truer idea of what does, indeed, constitute

a "normal family." In other words we shall not identify the "normal family" with the ideal family or with any one of the varied types of family life now existing in our own country. We shall attempt rather to express it in terms of certain fundamental personal relationships and habits of life and thought, which have characterized family life throughout its history.

### PRIMITIVE FAMILY LIFE

Students of the family have disagreed widely as to what was probably its earliest form. Their theories have been based on historical documents which throw light on early family history or on reports of conditions among present day savage tribes. But even these sources are difficult of interpretation. We do not, for instance, know whether modern savage tribes are not degenerate rather than primitive groups; whether in fact, as Mrs. Bosanquet suggests, they did not fail to advance in civilization just because they had not developed a sound form of family life.

There seems to be, however, a growing tendency to agree that the primitive family, in all probability, resembled somewhat the unit which exists among those apes which are closest to man in type. The meat eating animals find little advantage in group activity since hunting, to be successful, must be carried on by individuals. So we find among certain apes, a very simple family unit: the female caring for the child during its period of weakness and helping to provide food by seeking roots, nuts, etc., near the home; the male, possessing freedom and greater energy and mobility, providing the main food supply by hunting, and serving as protector to the female and her young. This probably indicates the status of the primitive family, a temporary union, but one which, while it lasted, presented already those elements which have always constituted the basis of family life: the protection and care of the weak, the provision for physical maintenance, the joint sense of responsibility for the children. In other words, even this elementary family life had a psychological as well as an economic basis.

The great significance in the development of the human race of even this simple family unit has been stressed by Prof. John Fiske. The willingness of father and mother to sacrifice personal freedom for the care of their offspring made possible the prolongation of the period of infancy. While a chick can begin scratching for its own

food a few hours after it emerges from the egg, the human child cannot even feed itself for many months, and is now forbidden, by law, to try to earn its living for fourteen or sixteen years. This slow process of growth makes possible the variation on which progress depends; it gives time for education, so that each generation may begin its active life equipped with the knowledge won by its forbears, instead of beginning over again where they began. Out of the prolongation of infancy in the shelter of family life, civilization has been made possible.

The way in which this simple, un-self-conscious group developed into our modern family is too long and complex a story even to outline in such a paper. I would emphasize the fact, however, that for those who are doing case work, the history of the family, and its changing status possess genuine significance.

We may think of this development from two angles. Viewed externally it is a social and legal institution, comparable in importance to our governmental institutions, having prescribed forms and functions. Viewed from the inside, it forms the intimate background of the life of every individual, the most vital force in his personal development.

#### THE FAMILY AS AN INSTITUTION

First let us consider a few of the factors which have influenced the development of the family as an institution. As far back as history records, and in practically all of the present savage tribes, marriage is considered in some degree a matter of social concern. The fixing of the degree of kinship within which marriage may take place, the formal rites which accompany it, the limitation of the rights of divorce, are evidence that it was never considered a purely personal affair. Custom, religion, and law have all been invoked as means for securing a stable family life against the explosive force of personalities which refuse to be held by any tie.

The increasing legal control of marriage probably followed the development of private property on a large scale, since this made it necessary to arrange for the control of the wife's property and to determine the legal status of the heirs. Property rights have had more to do than moral standards with the attitude of the law toward the illegitimate child. Nevertheless, these legal sanctions, even though based on no higher motive, did stabilize family life during a

period when it might have been engulfed by the tide of lax moral standards.

Another stabilizing force has been the attitude of religious teaching toward the family, every great religion having sanctioned some form of the marriage relation. The family has a peculiar significance in those nations whose religion is that of ancestor worship since on the rites performed by his descendants depend the man's happiness in his future life, not for one generation only, but for an indefinite future. In the development of the Christian church, marriage came to be looked upon as one of the sacraments and an indissoluble bond. This has, of course, been one of the strongest elements making for stability in the modern family. Since the separation of church and state, the civil law has regulated marriage though the religious service still serves to strengthen the sense of the sacredness of the marriage tie. Families, moreover, tend to maintain a joint religious life and in "mixed marriages" the difference in religious faith is a potent source of instability.

The present variations in divorce laws in our different states simply indicate the general questioning state of the public mind as to how permanent this bond should be. It is, nevertheless, clearly established that the family is so important a social institution that the law must at least control the conditions under which it may be created or dissolved. The reality of family life, is, of course, based on something far deeper than legal regulation. As Dr. Goodsell phrases it, "Marriage grew out of the family, not the family out of marriage." The law will sanction but cannot create a genuine family life. Marriage has always, as now, nevertheless, been considered a matter not solely of personal, but also of public concern and control.

#### THE RELATION OF PARENTS AND CHILDREN

Not only the relation of husband and wife, but also that of parents and children has been influenced by legal and social standards. From the beginning, the family had its bond in the weakness of the child and in the simple feelings of affection and responsibility which that evoked. Naturally, however, this affection, which was instinctive not reasoned, died as the weakness which called it out was followed by strength and independence. Observers seem to agree that some sort of concern for the welfare of the child exists

among savages while the children are little, though, with their quick passions, they are often unnecessarily cruel to them.

Later, the relation of parents and children became a matter of legal definition. In patriarchal times and in the Roman and Greek families, we find that the child was really considered a chattel subject to his father's will; that no individual had any standing before the law except as part of a family group; that absolute power for life or death often rested with the father who was also priest and judge.

This tradition has, of course, given way until modern law restricts in many ways the rights of parents over their children, yet also calls for increased responsibility on the part of the parents for giving their children proper training. An enlightened court, for example, will take a child away from his parents' control if they persistently fail to provide a public school education or badly needed medical care. The training of the child is now considered a matter of joint concern on the part of state and parents, the former requiring the latter to live up to the major responsibilities for its welfare. Law, which formerly buttressed the family as a property holding unit, is now concerned rather with its educational and cultural value.

This change in the law's attitude toward the responsibilities of parents for their children is in part the crystallization of a new ideal of parenthood.

In looking back on primitive life, we perceive a great reversal in the relation of parents to their children. Aside from the feeling of personal affection children were then consciously desired mainly for their service to their parents; now parents center their efforts and ideals on the future of their children. In the early family children were desired because, economically, they were an asset, either in the household and industrial activities of the family, or later, as wage-earners; religiously because there would be no happy life after death unless there were children to carry on the ancestor worship.

Now, a man struggles to earn enough to give his children opportunities for education and for development which he missed. We are even attempting to restrict marriage to those who are capable of passing on a sound physique. The modern family is more and more centering its emphasis on the future of the race. It is, however, well for us as case workers, to realize that this is a recent change in the angle of vision and that especially on the economic side the old attitude still persists.

## THE NURTURE OF CHILD LIFE

A social worker who is a grandmother said to me the other day, "I resent it so when people speak of children as a burden, they are the great joy of life. I often think that the very poorest of our families have in them the elements of the greatest joys,—the love of man and woman and the presence of little children,—if they only knew how to take advantage of them."

Out of this interest and this joy in caring for children in their weakness and watching that weakness grow to strength, family life came into being, and has persisted. There is hardly a home so degraded that the spark is not there. Yet the question is not infrequently raised as to whether the family is the best place to train a child or whether substitutes more intelligent cannot be found. Certainly, experiments with the care of children indicate that in infancy at least, children need mothers of their own. Institutions, however scientific, apparently cannot give the infant just the kind of personal attention that it needs, as their high mortality rate indicates. "Mothering" is of value to the delicate little mechanism.

As a child grows older, it seems physically less dependent on family life, as witness the fine development of many boys who go to a boys' school in winter and boys' camp in summer. It may be doubted, however, whether such good physical care can be given anywhere nearly as cheaply by such institutions as in a good home.

But it is for the other factors of home life, its educational value in a broad sense, that no substitute has been found. We shall indicate some of the ways in which the home provides essential training, the practical education, the growth in self-control and self-sacrifice, the sense of values. Because there are two parents, the family gives the valuable influence on both boy and girl of both man and woman. It provides the normal contact between one generation and the next.

## ECONOMIC INDEPENDENCE

In the first place economic coöperation within the family has provided some of its greatest educational opportunities ever since that first primitive group that persisted because of the need of mother and child for food. During the patriarchal period the family reached perhaps its maximum of economic self-sufficiency: the head of the family surrounded by his wives and children and servants,



together tending flocks, weaving and dyeing the wool, raising their simple agricultural products. Even when agriculture was developed and people settled upon the land, so that this family group had to break up into smaller units, each unit tended still to live on the products of its own toil. With the development of industrial life economic continuity in family life remained, since the sons tended to take up the father's occupation. In the medieval guilds, for instance, entrance into a particular skilled trade was usually open only to sons of the guild members.

Following the "industrial revolution," however, changes in family life have come with an upsetting suddenness. The old tasks of our mothers have dropped from our hands and we are not always wise enough to find new ones to take their place. The father often has no trade, no sense of being anything but a cog in the industrial machine. The son does not tend to follow his father's footsteps; the son of the farmer becomes the city magnate and the son of the immigrant day laborer enters a profession. The family is now a genuine industrial unit only in agricultural districts where women and children have a part in production as well as in consumption. The sons, too, often stay on the farm until they are ready to marry, and even continue to work with their father after that, and to inherit the farm on his death. This state of affairs is, however, by no means universal, and the abandoned farms of New England now taken over by Italians and Slavs show the extent to which the opportunities which industrial development offers have destroyed this family tradition.

The normal family is still, however, the economic unit, in that it has to spend only that which it earns. The pay envelope takes the place of the harvest. Family coöperation is expressed now in terms of joint spending rather than of joint production, the family pooling its income and meeting therefrom the varied needs of its members for food and shelter, clothing, recreation, etc. That this economic self-sufficiency has persisted throughout the history of the family indicates that it bears an essential and continuing part in the development of family life.

It is, in the first place, essential because of the inevitable weakness of childhood and the burdens which it entails. An occasional woman, who has a profession, like writing, that can be done on part time, can carry it on all through her married life, but the rank and

file of business and working women must give up wage-earning during the years when they are bearing and rearing children. The old condition which was the initial factor in creating the family, still holds good, namely, the dependence of the mother and the little children on the freedom and strength of the man. Nor to those of us who believe in family life, is this an unfortunate relationship. It is a sharing of responsibility and of work, which is the foundation for mutual respect and devotion. If our minds were set clearly enough on the significance of childhood there would be less stressing of the inferior condition of the woman, since hers is really the more important task, and the most valuable contribution which the man makes is to the training of the children, the wage being from this point of view only a means to an end, the preservation of family life. (I am not raising here the question of the stimulating effect on women of business and professional opportunity or of the wisdom of remunerative work before and after the period when their children need them.)

To return to the economic problem as such. The normal family will depend on its own material resources, pooling the major part of the earnings of the various members of the family and providing from this fund the necessities for the life of the family. Willingness to make mutual sacrifices and the power of adjustment to others' needs grow out of this necessity for sharing in the income and subordinating one's own desires to those of the family as a whole; the oldest son who works at a thankless task that his younger brothers may go to college; the mother whose chief enthusiasm in spending is to see that her daughter has pretty things; the child who is willing to carry his lunch in a box to save for records for the family victrola are learning self-discipline. A child who goes out into the world with this standard and habit of mind is not going to become the citizen who goes into politics for what he can get out of it. The economic problem of the family thus provides one of its really educational opportunities. It is almost a truism that the absence of this realization of the relation between income and expenditure and the lack of this willingness to subordinate personal good to the needs of the group is one of the great weaknesses in the development of the institution child.

There is certainly a steadying effect on expenditure when the family's income is the result of the family's labor. What we have

earned we treasure and, counting its value by the effort it cost, we want to get a corresponding value when we spend it. Income not produced by the work of individual members of the family never has this significance. In this as in other ways the family is the school for solving the practical problems of living.

### EDUCATION IN THE HOME

The family has indeed always been the most important factor in the education of the child.

In primitive times, the family circle was also the school. The Indian boy was taught by his father the wood lore and the skill in hunting and fighting which was the accumulated wisdom of many generations; the little girl was given odd bits of leather and a porcupine quill with which to imitate her mother as she made moccasins. Through this practical education, the parents passed on the knowledge and the skill of the race. As tribal life developed the elders instructed the boys in their special cult. Little by little, as the amount of human knowledge increased, it became necessary to have wise men to pass that knowledge on. Yet not until the time of Christ were there among the Jews, for example, any schools outside the home, the family and the church being the only educational institutions.

Indeed, it is only recently that the western nations have provided free schooling for all children. Even in parts of our own country school attendance is not compulsory so that large numbers of children still find in the home their only opportunity for education. Knowledge in any theoretical sense becomes then the property of the few, but in the home is offered practical training, father passing on to son the knowledge of his craft, and mother to daughter the secrets of household arts.

There is perhaps no other feature in which modern life in America is so changing this family tradition. The Montessori school takes a child at four; the out-door school keeps him for play time as well as for school time; the domestic science department trains the girl in the home duties for which apartment life and the increasing number of domestic servants give her no opportunity at home. In our own earlier rural life there was a simple and complete division of task between school and home; home training in all the practical aspects of life through work on the farm and in the home, and the

"three Rs" at school. A college president is quoted as saying that he went to school for three months and had nine months left for his education. Now our schools are trying to combine the two in an educational system which has tremendous opportunities, but which nevertheless, needs to be adjusted to home life. The "visiting teacher" has shown the importance of individualizing the home background of the children if education is to be made really effective.

In spite of the increase in the scope of the school curriculum, the home still provides training in many of the most important aspects of our lives. I read with interest two contrasting descriptions of boy life in rural communities: "Pelle, the Conqueror," the story of the neglect, the coarse surroundings, the hard work that fell to the lot of a boy brought up on a little island off the coast of Denmark, and the "Son of the Middle Border," Hamlin Garland's story of his boyhood in the middle west. They vividly portray the difference in the content of life resulting when the home, as in the latter case, provided a background of love of music and of books, of intelligent interest in the things of the day.

Formal education can, it is true, overcome the lack of such a background, but for most children the whole future trend of thought is given its direction by the habits, the interests, the ideals, formed in these impressionable years. The home is still a most important, if not any longer the chief educational institution. Since the child learns in this school by imitation rather than by formal instruction, it is doubly essential that the home life be one which he may wisely imitate.

#### THE VALUE OF TWO PARENTS

The part which family life has played in the development of personality, in the more subtle relationships of individuals, is difficult to trace, as it lies so far beneath the surface. The early instinctive feeling of tenderness for the weak is at the basis of the altruism which now plays so large a part in our community life. In the days when every one outside the family or the clan was an enemy, concern for the welfare of others could be developed only within this narrow family circle. Later, as these emotions grew in strength and as men were brought into closer contact with those outside this circle, this concern could be carried over into, and modify, the new relationship. This affects both parents and children.

On the one hand, as Professor Tufts points out, the responsibility for training children has had a definite effect on the development of the moral code. Individual moral choices may result from a more or less unconscious acceptance of customary standards. But in order to teach children what they may do and what they must not do, a much more definite conception must be evolved not only of what is right and what is wrong, but of the reasons for that choice. The necessity for answering that ever-recurring, "Why?" of childhood, has helped to change a purely customary morality into one which is conscious and reasoned.

Conversely, of course, it is in the home that the fundamental attitudes toward moral and social values are acquired. Here, as in many other aspects of family life, we see the importance of having two parents. The child learns from the mother those tenderer virtues of sympathy and self-sacrifice which have become synonymous with motherhood, from the father standards of courage and self-reliance. These virtues do exist in the homes of the poor as those know full well who have entered at all intimately into their lives, and are essential everywhere to the development of sound family life.

We recognize this in the abstract but we often fail to see to it that the family lives under conditions that make this personal influence possible. Too great a burden put on the mother's shoulders will break down her patience—we all get irritable when we are tired—and then she ceases to be a stimulus to the child. Case workers should see that mothers are given a chance—a chance for recreation alone or with the children; decent clothing so that they can keep the respect of their children; and help in accepting American standards. The settlements are wisely trying to interest children in the traditions of the "old country" and to teach them to appreciate the beautiful handicrafts. There is nothing more dangerous than the breakdown of the mother's influence with the older children which often accompanies poverty. In proportion as the mother's life is well rounded and possessed of varied interests will she be able to train her children.

But there is another parent and he too has an influence. No family is normal without a father to provide the contact with the outside world, the stimulus, the sterner virtues. The increase in juvenile delinquency in both Germany and England since the war

began bears out this conviction. Case workers need to face this fact more clearly, and recognize that where this influence is absent a substitute for it must if possible be provided. During the war, for instance, it might be possible for the Home Service workers to interest the stay-at-home men in serving, in so far as an outsider can, as godfather to some soldier's boy.

#### EMOTIONAL CONTENT

If moreover, the family is to provide this essential training it must, we feel, not only be economically independent; it must have a genuine emotional background and it must have stability. Two emotional elements have been woven together into the texture of family life: the original sex impulse drawing together the man and woman, and the instinctive love for the child. Not only were they essential for the creation of the primitive family; they have been dominant elements throughout. They have modified each other, the sense of joint love and care for their children being probably the strongest factor in maintaining a permanent relationship between the man and the woman, the love of father and mother for each other influencing their attitude toward their children. (There is a noticeable difference in this respect in the attitude of parents toward adopted children where this emotional content is absent.) Without this emotional background serving to cement family life, the inevitable antagonisms and conflicts that must occur at times in any group living in such close contact would often cause its disintegration.

This may seem obvious, yet it again needs stressing in a consideration of the family for case workers. Do we consider enough how absolutely fundamental this emotional element is in maintaining family solidarity? Just as an illustration,—we are dealing with the family of a non-supporting husband and we urge the wife to take court action in order to force the man to resume his financial obligations. Do we always consider whether this is not going to destroy absolutely the emotional factors in the family life and do we consider it a last resort not a first one? Obviously we must, at times, utilize this means to bring a man to his senses, but do we often enough stop to ponder on the relative significance of emotional stability and economic independence? Do we often enough utilize the man's instinctive devotion to his children as a means of grace?



It is perhaps unnecessary to say that there may be at the other extreme an overstressing and sentimental attitude toward the relation of man and wife and children. Books, however, like "The Poor Man's House," and Miss Loames, "The Queen's Poor,"<sup>1</sup> indicate that there is throughout modern industrial life a sound underlying devotion and joy in family life on which we should more largely depend in family planning. It has, it is true, a physical and instinctive basis, but on that very basis, a genuinely spiritual structure may be reared.

It is, moreover, another element in family life which we must especially reckon with just now. Tremendous emotional adjustments are necessitated by the departure of the soldiers. The experiences in Canada in which intemperance and immorality are unfortunately not infrequent among wives of soldiers, heretofore women of irreproachable character, show what utter breakdown may result from this change in the emotional content of life; the substitution on the one hand, of strain and anxiety for the sense of assured protection and genuine comradeship, on the other, the sense of new freedom from control.

If we are to be truly helpful in tangled family situations we must reach a sympathetic understanding of the emotional elements involved and attempt either to strengthen normal relationships, or where that is impossible, reckon the effect on the whole life of the family of the absence of this fundamental factor.

#### FAMILY STABILITY

That a stable family life in which the child may secure its physical and moral development is necessary, is a conviction probably accepted by all case workers and one which is in our opinion borne out by the whole history of family life. If we believe that the mutual dependence of family life has been an important element in the growth of morality; if we believe that practical education in the home is valuable; if we see in the home a place for the nurture of spiritual life, we must recognize that permanence is essential.

There is, however, a change in the conditions which have kept the family stable. Some of these conditions were the economic usefulness of the family group, its relation to the holding of property, its religious significance. Of these, the second, the necessity

<sup>1</sup>See especially the chapter on "Husband and Wife."



for safeguarding property rights, has probably been the largest factor in creating legal safeguard for the family group. Yet, in this country, property rights have almost ceased to be a factor in maintaining family unity,—in fact, in the propertied class divorce is very frequent.

Since these earlier safeguards of family integrity are weakening, it behooves those who believe in its value to use every means to strengthen it through the development of its educational and cultural activities.

### THE NORMAL FAMILY

We have attempted to sketch in outline certain elements in the complex history of family life and the forces which have molded it. The significance of this development to the case worker seems to me twofold.

We talk rather easily about "restoring families to normal living." We shall be more likely to achieve this without harm to the delicate fabric of family life if we see the family as a growing, developing unit of which its present form is only a stage and realize the process by which it has arrived here. We need to know the extent to which the father has been priest as well as provider; the family the center for moral and secular education; the way in which local customs passed on by the family have formed the basis for much of our morality and common law. With this background of understanding, we shall be keener to study "our families," not simply as economic units, failing to function, but as the complex basis of the moral and spiritual life of the individual members. That surely adds to the complexity of our task, but adds also to its significance. Some other economic adjustment of human life is entirely possible, and has been portrayed delightfully in many of the Utopias, with a purely individualistic and transient relation between men and women and with the children provided for through public institutions. But the family has been not only the economic unit but the largest single factor in the development of the altruistic and spiritual factors in life, and for the stimulation of these elements a substitute is hard to find.

In the second place it lays upon the case worker the necessity for studying the reaction of industrial and social changes on family life. We are more self-conscious than our ancestors and more keen,

therefore, to watch the results of our own social experimentation. The thoughtful study of individual families will indicate the extent to which modern social institutions foster or destroy the proper functioning of human life. Through skilful observation of family problems we will find the sanest background for a developing social program.

#### CASE WORK AND THE FAMILY

There is need, moreover, that we recognize the elements in our communities which tend to break down this normal family life. That it has tremendous vitality is indicated by its survival through all the vicissitudes of history. But that in individual cases it does fail to function is too obvious to need stressing. Sickness, inadequate wages, bad housing, intemperance, immorality, all these and many other factors break down this finely adjusted institution. Some of these are factors outside the family itself, for which the community is responsible, and which must be removed by community action. More and more we recognize how many times family breakdowns may ultimately be traced back to unwholesome external conditions such as these: a tenement so small that there is no place for real family gatherings; a father whose hours of work are so long that he cannot share his children's lives; an income too small to make joint recreation possible; these and many like factors nullify the truly educational possibilities of the home. It certainly is a task for those of us who believe in the value of this family unit to study ever more searchingly the conditions which tend to lessen its value in the development of the child and to endeavor to overcome them.

In addition there will always be the task of trying to help re-establish as nearly as may be, the homes where family life has failed to maintain itself either because of external conditions or because of an internal breakdown. Every home so reestablished means a sounder background, a better training for each child in it, so that our task has genuine social significance. It is, nevertheless, a task which will be approached in humility of spirit, if we realize of how varied and subtle strands normal family life is woven, and how delicate is the task of so readjusting them that they will form the perfect pattern.

## OFFSETTING THE HANDICAP OF BLINDNESS

BY LUCY WRIGHT,

Associate Director, Boston School of Social Work.

The present stringency of the labor market has opened up opportunities for the present, at least, for use of handicapped labor, as never before. Among returned disabled soldiers it is so probable that there will be a certain number of blind men, that the government has already prepared a plan for their reception and special training. It is especially worth while, then, at this time, to try to formulate some fundamental principles of social case work in readjusting industrially men handicapped by blindness.

Foremost among these is the principle that all the work must be work *with* and not *for* the blind. If the "give and take" relation is the essential working basis of all good case work, it is doubly so in work for the physically handicapped. It is quite usual for blind men to ask: "Will you see what you think of my case?" A man of rare ability with oncoming blindness may put this to you: "I have a year, they say, before I shall be totally blind. I expect you people to tell me how to use that year to the best advantage." Another may say: "I am willing to do my part, but I cannot manage alone against such heavy odds. What will society do about my case?"

If we are to work intelligently *with* the blind we must first find the man behind the handicap. That is, I believe, the only hopeful basis on which it is possible to equalize his chances in such a way that he may make the contribution he has to make to society, be it small or great. To find the man behind the handicap is not, however, so simple a program as it may seem.

There are, first of all, certain obstacles in the minds of the rest of us. Blindness is a very obvious handicap. We who are relatively whole cannot help dwelling on what is gone rather than on what is left in others. It takes a blind person to say, as one cheerful, successful blind woman said to me, "Why, it's not the fact that you're blind that counts, but only how you take it!" We sighted ones even "speak up loud" to people who wear smoked glasses, so

vague is our concept of what may be going on behind those glasses in the mind of the person who simply cannot see with his eyes. We do not trust and understand the intellectual life without sight or the use of other senses as well as that of sight, and so we class together men who cannot be classed together in any other respect than that of the physical handicap they suffer in common.

The very existence of organized work with the blind from nursery to special work shop, encourages the tendency to lump the blind in a class. The best efforts of the best workers, blind and sighted, have not been able to offset the danger, and will not be unless, at this moment, when a share of the world's attention is turned to the physically handicapped, we succeed in "putting over" some such idea as I have suggested.

This idea will not be particularly pleasing to those among the blind and their sighted champions who believe that blindness is in itself a qualification for special consideration for it cuts right through the whole exploiting design. It removes the basis for either emotional or exclusively political handling of the industrial affairs of the blind. Without doubt the most serious obstacles to the development of a plan of work with the blind, on what a blind man has called "the something for something" basis, as against the "something for nothing" basis, lie in tendencies of both blind and sighted supporters of this cause to exploit the situation of the blind for emotional and political values rather than to develop it on the basis of a reasonable efficiency. This is regrettable, not only on economic grounds, but because it puts the blind and work with the blind on a false, unstable and temporary basis, and cannot, in the long run, bring them happiness and usefulness. Emotional exploitation is usually the fault of the sighted. Political exploitation is more often the fault of the blind, and the measure of success or failure of work with adults depends very largely upon the leadership in this respect within these two groups.

The great advance made in every department of social work in the direction of tests and estimates of individuals has greatly improved the quality of social case work with the blind.

This is illustrated in the department of education of blind children, by the work of Robert W. Irwin in the public schools of Cleveland, Ohio. Here we see the prospect of equalising chances in life for physically handicapped children, not only by giving them

equal opportunities with sighted children, but by sifting within the group the sub-normal from the sound and training them appropriately. These are first steps. The principle needs only to be carried further in work with adults, and made to cover character as well as mental and physical tests, until we acquire a basis for and skill in estimating the possibilities of individuals, in time to be of service to them and to the community. One example of a move in the direction of this testing-out principle is illustrated in work for adults, under the Massachusetts Commission for the Blind, by the effort to use home-teaching of the blind as a preliminary try-out before shop training. This plan makes occupation therapy a test, if not a step, in pre-vocational training of blinded adults.

The need for securing a real basis for social case treatment of employment problems of blind men by coördinating the various lines of effort in adult work through some such central agency as state commissions or federal boards has been forcibly illustrated in the plans worked out for disabled soldiers in various countries since the war. The program includes orderly use of curative occupations, vocational reëducation if necessary, and placement in accordance with ability, whether in competitive industry, home occupation, or subsidized shop. Such an orderly technique presupposes coördination of forces in the industrial service of the blind, not on a basis of philanthropy, but of public educational and vocational service.

It must never be imagined that the principle of "finding the man behind the handicap" will minimize the amount or expense of work to be done. It is only a means of finding out what are a person's potentialities for the sake of reasonable economy, efficiency and, most important of all, for the happiness of the handicapped. This plan for individualizing may, on the one hand, be regarded as a protest against the unnecessary and harmful expedient of "trying to make a silk purse out of a sow's ear." A thinker with a scientific mind points out that this attempt, too common among social workers in what are still pioneer days, not only taxes the worker and defeats its own purpose, but too often destroys the possibility of a perfectly good pig-skin purse. It may, on the other hand, be regarded as a protest against the waste and unhappiness resulting from misuse of fine minds and natures in inappropriate work. This is felt most keenly in observing the lives of well-trained, intellectual blind people, for whose good energies society with its prejudices furnishes no outlet in effective work.

Individualization of the handicapped involves continuous recognition of the difference between those who are and those who are not capable of industrial aid. It involves distinctions among the forms of industrial aid, but requires always the same underlying principle. Society says to the handicapped man, "You keep up your end in proportion as you can,—we will keep up ours in proportion as is necessary, in order that you may make the contribution that is in you, be it little or much." This is the "something for something proposition" which must lie behind every form of industrial aid for the blind. To carry it out we need (1) to work out an orderly technique of social case work that is as acceptable and understandable to a handicapped man as to the sighted worker with the blind; (2) to provide by way of background a campaign of education reaching family, neighbors and employers in every community to which disabled men return, whether they are the victims of disease, industrial accident or war.

The difficulties of finding the man behind the handicap are many and various. It may be that he can be discovered early by some very simple touch. On the other hand it may take years to find the man behind the handicap, and then his contribution may be so slight that the subsidized shop may be obliged to meet him not only half-way, but more, if he is to "do his bit."

The fact that a physically handicapped man finds himself in the almshouse is no proof that he lacks skill and character. But it is well to try by actual test whether he has skill with his hands, as well as to make sure whether he has the force of character to stand up in the community. Raising of false hopes is one of the unkindnesses to be guarded against in all work with the handicapped. The temptation is great. For the almshouse population, the visiting home teacher who by actual try-out can test the mind and skill of hand of the individual, and form a just estimate of his character, is an essential part of a safeguarding plan. Through such a worker we make occupation therapy and pre-vocational testing a reality in work with adults. Massachusetts has been especially fortunate in her state home teachers (blind), and one among them has an especial gift for finding the good human qualities that lie behind the handicap of blindness, as well as the ability to read with the fingers and learn simple manual processes such as netting and basketry. The following is her own account of such an instance:

Another man, formerly at the State Farm, was there because while trying to earn a living at canvassing, after losing his sight, he had been robbed of his wares by a dishonest guide. He placed himself in the poorhouse, and had been transferred to the State Farm, where I found him. In the four months of instruction he learned to read and write Braille, to cane-seat and pith-seat chairs, and make rake knit bags. He was sent to a workshop in April to learn broom making, and before his vacation in August, had also learned to weave coarse rugs. He is now completing his apprenticeship, and will shortly find a place among the blind wage-earners. He has made since July first about fifty rake net bags and sold them, receiving between forty and fifty dollars for his work.<sup>1</sup>

Then there is the man who meets you more than half-way. You are being tested rather than he. How can you help him contribute all that is in him to give? This kind of man is healthy, in mind, body and spirit. He simply lacks the use of one sense-organ. He requires no long period of readjustment. He masters one hand process after another. He had trade-training behind him before he lost his sight, and is confident that he can, with backing and special equipment, follow his old vocation of florist, in which he has had twenty years experience. Your job as a social case worker is with possible employers and backers, and not with the blind man. It is not a question if he will "keep up his end," but whether society will keep up its end. You must prove by actual experiment, and you can do it only with the aid of some florist of standing, that this man can actually do without sight the processes he did with sight, and that there will be a market for his labor, if he is provided with the necessary capital and tools with which to work. The story of how this particular man developed a greenhouse, with crops of chrysanthemums, tomatoes, mushrooms, etc., and of how, when the fuel shortage compelled him to close down, he turned successfully to competitive factory work cleaning bobbins in a worsted mill, is full of interest,—but what I have told is perhaps enough to suggest the variation in peace problems of employment of blind men.

The variation among disabled soldiers promises to be in some ways greater, in others less,—less, because the men are already sifted by certain mental and physical tests before they go to the front; greater, because of the chances of other physical handicaps in combination, perhaps quite different from those appearing in problems of civilian life. Greater, too, because among officers and men, this disability may cut across we know not what range of men

<sup>1</sup> Massachusetts Commission for the Blind, 11th Annual Report 1916-1917.



of talent. The plans so excellently carried out at St. Dunstan's, England, for soldiers disabled by blindness, and the carefully laid plans for American soldiers who may be so disabled, all provide for curative occupation early. Visitors from St. Dunstan's go to the blinded in hospital wards early "for good comradeship." All of the nurses, including the superintendent, in some of our base hospital units have voluntarily equipped themselves with knowledge of principles and practice of occupation therapy, and the government has laid careful plans for each succeeding step to the point where the handicapped individual comes back to live out his life in the community.

Canadian experience tells us that the principle of helping a man back to his former vocation holds in 90 per cent of cases of all disabled soldiers in Canada. Only 10 per cent need complete re-education. Placement takes on a new aspect when the country cannot afford to lose the labor of a fraction of a man. Work for the handicapped is transformed, and it is for us to see that the basis of transformation is brought over permanently into our community programs. Only ignorance of the true possibilities for individuals, and the dangers of emotional and political exploitation stand in the way.

In the meantime, for the worker with individual cases, there are suggestions out of past experience that may be helpful. The informal use of some simple classification, in arranging all the facts about the man and the situation may help both the man and the social case worker to face things together. Dr. Southard's discussion of classification in his course on Social Psychiatry at the Boston School of Social Work this winter has stimulated many of us to put in more orderly shape half-crystallized ideas and methods in social case work. The plan outlined in the footnote for rearrangement of all the facts in the situation is one we are in process of trying out at the School both as a help towards making a plan and getting at larger implications.<sup>2</sup> It presupposes that all the necessary facts

<sup>2</sup> Social Diagnosis, Social Case Work and Problems of Unity, Stability, Balance or Adjustment in situation of Unif:

Individual Classification of information about unit:

I. Self	Defects	Powers
Physical, viz. Mental, Psychological, Character, (apparently)		

have been gathered and recognized, and that only questions of actual diagnosis and treatment remain. It seems to be most helpful in the matter of proportions and emphasis. The individual as unit, and the offsetting of defects by powers are perhaps the most important points about it in relation to the blind.

In speaking to various groups this winter, students and others, it has seemed to me that it was more important to direct them to acquaintance with the life stories of handicapped individuals—in fiction (when truly interpretative), in biography, autobiography and in fact—than it was to dwell on points of special technique, in the education and employment of the blind. Nothing will replace this knowledge. The part of the blind in work with the blind has been its characterizing feature from the start. Often the best thing you can do for a newly blind man is to put him in touch with some other man who has been through similar experiences, and worked out for himself a recognized place of usefulness and a philosophy of life. For suggested reading, to prepare the mind for "what blindness is like from the inside out," a short list is given below.<sup>3</sup> Many

## 2. Relation to immediate environment and to others.

Environmental  
(immediate)  
Educational  
Industrial-Social  
Legal-Social  
Unclassified

Defects

Powers

Diagnosis:

Self-adjusting

Requires interference

Temporary—Continuous—Permanent

Prognosis:

Helpable from point of view of

Treatment:

Social Implications.

## \* SUGGESTED READING

Keller, Helen, "The World I Live In."

Montague, Margaret P., "Closed Doors." (Stories of blind and deaf children.)

Duncan, Norman, "The Best of a Bad Job." *Harper's Magazine*, 1912, p. 412.

Hawkes, Clarence, "Hitting the Dark Trail."

Holt, Winifred, "A Beacon for the Blind." The life of Henry Fawcett, the blind postmaster-general of England.

*The Outlook for the Blind*, a quarterly magazine in ink print devoted to the interest of work for the blind in this and other countries; edited by Charles F. Campbell, Columbus, Ohio.

more might be given. These are selected because they seem to me to help towards imagining what life in the dark may be like. The titles, even here, often stress what is gone, like "Closed Doors" and "Hitting the Dark Trail." Two suggest both sides of the case in quite a remarkable way,—"A Beacon for the Blind" and "The Outlook for the Blind." The two most genuine and helpful titles to me are "The Best of a Bad Job" and "The World I Live In." "Closed Doors" and "The World I Live In" do not relate to employment problems of men, but they, perhaps, set you right, at the start, better than any others.

To summarize briefly, there are seven suggestions towards helping to find the man behind the handicap that seem most important to "put over" at this time. They are the following:

1. Acquire confidence in other senses than those of sight.
2. Try to understand the real possibilities of intellectual life without sight.
3. Consider character as well as economic values. Professor Amar has made this point very clear in saying, "The mutilé possesses always a perfectly utilisable capacity for some kind of work. . . . He may actually compensate for his physical defect by an active good will, which increases his social value. This is a psychologic fact which must be turned to advantage."
4. Help the handicapped to measure themselves, not only against the handicapped, but against all those with whom they must compete.
5. Make plans for offsetting handicap on the basis not of "something for nothing" but of "something for something."
6. Test the facts to be faced with some simple classification that can be talked over by you and the blind man together.
7. Look for your inspiration to the lives of the blind themselves.

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General Reading with references to the blind:—

*Life*, an English quarterly, devoted to the care, reëducation and return to civil life of disabled soldiers and sailors.

*Construction*, monthly bulletin, Military Hospitals Commission, 22 Victoria Street, Ottawa, Canada.

W. L. V., "Refitting Disabled Soldiers, a Lesson from Great Britain." *The Atlantic Monthly*, March, 1918.

## THE CRIPPLE AND HIS PLACE IN THE COMMUNITY

BY AMY M. HAMBURGER,

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For many generations the cripple has occupied a rather obscure place in the community, and has not had sufficient chance to share equally in all opportunities offered to normal children and adults. It is true that many individuals representing various organizations have been interested in the cripple and have helped in securing proper medical treatment for both crippled children and adults in some communities and limited educational advantages in others. Yet they have been unable, because of very apparent and justifiable reasons, to interpret to the community the real individual behind the handicap.

However, through industrial accident boards the needs of the adult cripple have become increasingly more apparent. As a result of recent infantile paralysis epidemics some of the immediate and pressing needs of children have also become apparent, stimulating in the community a deeper interest in both these groups. Although industrial accidents and infantile paralysis,—both serious causes of crippling conditions,—have increased the total cripple population, the community has not been aroused until the present time, to take any active steps in carrying out a constructive program, thus indicating their recognition of the significance of this group in community life.

Now, because of the war, the care of the returned crippled soldier forces the community to immediate action. Already, plans for his medical care, for educational, vocational, and industrial opportunities are well organized. Everything is being done to assure him of a permanent place in the normal life of the community. As a prospective idle dependent he is realized to be an undesirable citizen, so every chance for expressing himself in the kind of work he is best fitted for, by education, training, and physical condition, is to be open to him. It has even been said that a plan for some readjustment of the Workmen's Compensation and Liability Act is to be made, thus releasing the employer from the extra rates of insurance,—an expense incurred by employing handicapped labor.

All this means that the industrial world will be open to him and it is for him to choose his place. He will not have to face an unkindly and prejudiced community because of a slight physical difference. Such has often been the fate of the peace-time cripple.

These new developments, naturally, have an indirect influence upon the future of the peace-time cripple. They assure him that the cripple will no longer be judged by his slight physical difference, but by what he can offer to the community. It is true that many peace-time cripples have lived out their lives heroically and successfully and are holding positions of responsibility. This means that they made the most of the chances that came their way. Stories are often told of the successful individual cripple but such stories have never been accumulated in any available form that might serve as an inspiration and guide to other cripples, and to interested persons in this field of work.

At a meeting in Boston a member of the Committee on Vocational Training for Disabled Soldiers in discussing their work said that, at the very beginning of work before definite plans were made, they had asked for such material. They wished to know what cripples have been doing all these years; whether they had been successful in large numbers; if so, whether cripples with the same type of disability showed any tendency to follow any particular line of occupation; and whether they had been successful in that. Such contributions would have been invaluable as a guide. They soon learned, however, that information of this kind was not available in this field in the United States; therefore they were compelled to look to France and other allied countries for advice.

Social agencies, institutions, or whatever may be the type of organization working with cripples are the natural sources to look to for whatever information may be had about this group. It is, however, true that they are working with a limited number of cripples in their field and can, therefore, judge of their limitations and abilities by highly selected facts only. "Unfortunately, it is the many varieties of human failures which come as a grist to the social worker's mill and diagnostic studies are essential for the determination of what can be done by this or that treatment of the human material at hand."<sup>1</sup> For lack of time and funds it has not

<sup>1</sup>"Psychology and Social Case Work" by Dr. William Healey, National Conference of Social Work, 1917.

been the custom to diagnose an entire field of work—such as cripples—in order to get a background and learn from those who have no reason to come to the knowledge of any of these sources. At once the question might be asked if this is a feasible plan and if it has ever been tried.<sup>2</sup>

#### THE CRIPPLE SURVEY IN CLEVELAND

For such information it would be well worth while to look to the City of Cleveland, Ohio, a typical American city, which has made a diagnosis of its cripple problem and so knows all its cripple children and adults, their failures and their successes.

A group of persons, representing five different types of agencies, working with cripples were interested in child welfare work; the general condition of the handicapped; and the industrial chances of the handicapped. Having reached a stage in the development of their work where it seemed impossible to serve the community and cripples helpfully unless they could obtain some further light on their particular problem they too looked about for information on cripples in general, but could find nothing available in the United States. At this point they were advised to diagnose the entire problem in their city in order to get a clear idea of what had been done and what was needed. This seemed a colossal task but plans were soon under way for a city-wide house-to-house canvas, including both rich and poor. It was to be a democratic survey in every sense of the word and looked to the living sources of the community to contribute their share to make it a successful undertaking.

The social agencies of Cleveland, at first, thought that they surely knew all the cripples in their city. But after trying out a fairly typical section of the city, they were convinced by the results that they had in the past judged the problem by limited groups. The same proportions of new cripples—65 per cent unknown to social agencies—were found by the surveyors in all districts. A larger proportion of unknown crippled adults was found. This at once suggested that the adult cripples are not the dependents that one is led to think. It is so easy for the uninformed public to judge the entire crippled population by the unfortunate cripple who may

<sup>2</sup> "Education and Occupations of Cripples, Juvenile and Adult," by Lucy Wright and Amy M. Hamburger, Published for Welfare Federation, Cleveland, Ohio, by Douglas C. McMurtrie, New York City, 1918.

wish to spend his life selling shoe-strings and pencils on the street corner because he finds it profitable to do so. In the whole city about 150,000 families were visited and the total number of cripples recorded, including those known to social agencies, schools, hospitals, homes, almshouses, etc., was 4,186.

The response from the cripples themselves was most gratifying. When they were asked to contribute from their successes or experiences in life, to the encouragement and inspiration of others similarly crippled, or to tell the obstacles to be overcome before the cripple could be assured of any encouragement, they most graciously and joyously responded. Some were amazed that they should be considered cripples, even though they were without an arm or leg, or perhaps seriously crippled as a result of infantile paralysis. They had never considered themselves handicapped in any sense.

I remember well my visit to a man who had lost his right arm to the elbow and who was actually amused at being considered a cripple. His home was in a very respectable neighborhood of detached cottages. In response to my knock a man's voice bade me come in. I entered a large sunny kitchen, where this cripple was busily "washing up," as he called it, for dinner. He continued while he asked me who I was, where I came from, the purpose of such a survey, and the source of the financial support of such an undertaking. He emphatically said he wished to be connected with no philanthropic scheme. I explained everything from the purpose to the source of finances including the names of our committee members. As I finished he said, "I call that a fine piece of educational work, for you are not only learning about us but you are teaching the people of Cleveland that we are not an idle, begging lot, but men and women like the rest of you, with your good qualities and your failings, and that we want the same chance. We want you all to see us as we are,—real men and women with a slight physical difference but the same otherwise, and able to hold our own with you if given the chance." He then invited me to join his wife in the living-room where he told me his story.

He was one of a large family, whose parents were respectable, hard-working people. After graduating from grammar school, feeling the necessity of earning money and having a marked mechanical interest, he decided to learn the machinist's trade. Unfortunately at the age of 24 years,—he was then a skilled steamfitter,—he met



with an accident which resulted in the loss of his arm. The company made no settlement, as they considered the accident due to his own carelessness, and as he could not continue in his present work "he grit his teeth" and determined to use his savings for "educational help." He took a special course in mechanical engineering in a technical college, which he soon realized was beyond him because of his meager preparation. But he was not easily discouraged and went to an institution in a distant city where he took a course in mechanical drawing. At the completion, in a year, he asked to be given a chance in their workshop; they at first refused but later consented to employ him. Here he did all kinds of drafting. After a few years he went back to his home city, studied to be a first-class marine engineer, got his license and applied for a job. From now on he met his greatest obstacles. Unconsciously he had a habit of putting his disabled arm in his pocket and often was on the point of securing a much desired job, when the arm would as unconsciously come out of his pocket and the possibilities of work were gone. One day in sheer desperation, after being refused many times, he returned to one employer and said, "How do you know what a one-armed man can or can not do? You have never hired one. Why don't you hire one and give him the chance to show what he can do?" He was hired, at his own risk, as first-class engineer on one of the lake boats, where he remained for about 15 years. He earned \$175 a month. Because of his wife's ill-health he recently gave up his work. He, however, carries on a small business as automobile repairer and installer of heaters. He can handle all kinds of tools and do all the necessary processes of work in both jobs with the exception of cutting pipes.

In discussing the problem of cripples he gave from his own experience and good judgment much helpful advice. Among other things he said:

Don't judge all cripples by the loafers on the street corners. They are usually so from their own choice, or ill-advised help of their friends, and often would be just the same if they were not handicapped. Don't make us a separate class. We are the same as the rest of you. Judge us by what we have left, not by what we have lost. Put aside philanthropic schemes but stand ready to give us helpful advice when we are first disabled. This is the time we need it and need the right kind of friends. Steer us into the right occupation. Tell us about others who have been successful. Provide educational opportunities and training for children

This successful cripple, with his fine philosophy of life and determination of character was a type of many men and women constantly being found through this survey. Consequently, the first definition of cripple: "A person whose muscular movements are so far restricted by accident or disease as to affect his capacity for self-support," was gradually abandoned and the purpose of the survey became: "To discover the economic and educational needs, capacities, and possibilities of children and adults in Cleveland who are handicapped because they lack the normal use of skeletal or skeleton muscles." This latter made it possible to carry out the original plan of making it a democratic survey.

As a result of such a broad purpose, the types of handicap considered were many, from loss of two or more fingers or a thumb, to a combination of most disabling conditions. This brought the work into a varied field of occupations,—so varied that there seemed to be no prevailing type of crippled persons following one special line of work. It is interesting to know that among 3250 persons over 15 years of age including 400 housewives, who were considered self-supporting, 58 per cent were employed and they represented every known disability recorded.

These industries and occupations were carefully classified in the hope that some further light might be found about the choice of occupations of the one-armed, or armless cripples; the one-legged or legless cripples; the cripples with other kinds of disabling conditions. However, the successful cripples most obviously adapted themselves to the type of work they were qualified to do. Three armless men were found following three distinctly different lines; one is a beggar, spending his time on the street corner; the second, a street peddler who, with reins about his neck, drives a small team through the streets; and the third, a judge in the District Court who wrote his bar examinations holding a pencil between his teeth. This is his only method of writing because his arms are amputated close to his shoulders, thus preventing the use of artificial arms.

Among the legless cripples were: a beggar of fine physique, unfortunately, undisciplined in youth, sitting in the hotel doorway, asking alms under the pretext of selling gum, and averaging from \$15 to \$30 a week, according to his mother's statement; a successful stenographer employed by a real estate company, earning \$17 a

week; a successful salesman in the employ of an artificial limb company earning \$100 a month, who said he could run and dance like a normal man, although to the keenly observant person, a slight limp and slight stiffness of one limb could be detected. There was also the skillful cartoonist with a congenital paralysis of one arm, and a defect of one leg, whose entire life has been as much like that of a normal person's as his judicious parents could make it. So unaccustomed was he to thinking of his handicap that he was almost startled when he was informed by his mother that she had reported him as a cripple to the surveyor. He dances, swims, plays tennis with one hand, and enjoys the usual activities of the normal man.

These are merely types of innumerable cripples visited in this survey. Each is different, showing clearly character defects and the variable mental attitude that plays such an important part in directing the failures or successes of the cripple in the economic world,—as important a part as his physical disability and in some cases more.

Of the total number at work 54 per cent were earning a living for themselves. Over one-half of this number were supporting themselves in addition to others. Only a small number of those unemployed were receiving industrial pensions, which immediately raises the question as to whether industry is bearing its just burden in relation to the number of accidents.

The number unemployed, of course, was greater among those having the heaviest kind of handicap although large numbers of those with serious disabilities were at work. The man with double club hands and club feet illustrates the latter type. His parents were Polish immigrants who were illiterate and who never learned to speak English. This man was the oldest of 21 children born in a remote town in Kansas. Although his parents realized his deformity, no doctor was consulted until he was about five years old—his mother had a midwife at birth. As his father was a laborer earning \$1.10 a day, the doctor's price was beyond their means, and no further medical advice was sought. Until 12 years of age he was dragged about in a cart by his younger brothers and sisters. About that time the family moved to Cleveland. A shoe-maker in the neighborhood offered to make shoes for him which would enable him to walk. He also taught him to make his own shoes, which he does to this day. From that time he was no longer dependent, and, best of all, he could go to school, an unexpected but longed-for joy. But

cause the family income was so small, he felt after five years of schooling that he must go to work. During this time no suggestion of public hospital was made to him or to his parents by teacher or neighbors. Therefore, with practically no use of his hands, selling newspapers seemed the only opening.

He is now 35 years old, and with the exception of a year when he tried the experiment of keeping a cigar store which was not a profitable business venture he has sold papers on a street corner. He has also some regular customers in office buildings. Both parents are dead and he is the support of a sister and two children, and two young sisters whom he hopes to send to high school. Very frankly he said:

My parents were simple, ignorant people who did the best they knew how. I have no complaint to make. I am strong and vigorous. I like to work and am thankful for the opportunity because I must support my family. It is not too much of a care and it gives me something to be responsible for, and a reason to make a home. Think of the types of people with whom I come in contact: think of the side of life that has been revealed to me and from which I can guide my family. No, I have no complaint to make but I trust all cripples may have proper medical treatment; that they may have educational advantages; and that you may interpret us to the community, especially to employers. Both are strongly prejudiced and unwilling to take us for what we are.

This kind of occupation with no future to it would not be advisable for every cripple to follow, but no one watching this man at his work could doubt his businesslike attitude in close competition with the very alive young newsboys who frequent his corner.

The results of this survey may seem so optimistic that one might easily assume that no further plans are necessary for cripples. But when it is known that one-half the total number were crippled in childhood, and that one-fourth of the total crippled population were under the age of 15 years at the time of the survey, very important plans suggest themselves and are already under way in Cleveland.

The importance of making such a survey cannot be overestimated either for Cleveland or other cities. It has not only given the interested groups and social workers in Cleveland a general knowledge of their crippled population in all its phases, but has also given them and others undisputable facts by which to judge this problem fairly. From now on mistaken ideas about cripples

can be dropped. Here is an opportunity to put them right, so to speak, in the minds of their neighbors who are apt to have very wrong ideas about the ambition, ability, and economic status of those who do not present the same outward appearance. From Cleveland, a city largely without industrial training either before or after disablement, where cripples unaided have contributed to their own successful economic independence, much can be learned. The lives of unknown cripples are much more normal than had been supposed, although, because of unequal chances, they have undoubtedly often followed the line of least resistance.

The important fact to be faced is that cripples must be divided into two large classes,—the helpable by normal educational means and the helpable by specially devised means. By the former is meant those who are able physically and mentally to share normal opportunities of life; by the latter is meant those who are unable physically and mentally to share normal opportunities of life and whom it is not human to force beyond their ability. They should be aided to live out their lives happily with the limited equipment they have. With this division it will be much simpler to establish the normal place of the cripple in the community. To accomplish this means something more than case work with individuals; it means more surveys like Cleveland's, and educational campaigns, legislation, etc., as a basis for needed plans.

What do the cripples themselves want? Turning again to the life stories of the successful ones, they want:

- 1—Not to be confused with the begging type of cripple.
- 2—Not to be forced into a special class.
- 3—An opportunity to be judged by what is left and not by what is gone.
- 4—To be given an opportunity to make the contribution of which each is capable.
- 5—To share equally in all chances offered to normal individuals.

This is the appeal from normal, thoughtful cripples to interested individuals, organizations and social workers for an active share in life. The task then, is to extend permanently to all the advantages of community life.

## THE SICK

BY EDNA G. HENRY,

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Social work, unlike medicine, still suffers lamentably from a want of precise and sufficient knowledge. More complete statistics upon poverty, pauperism and mere misery, their nature, extent and causes must be collected and made available before any social worker can speak with authority. Of two facts, however, he is already convinced. Prevention, and teaching for prevention, are as essential in social work as in medicine. Neither can there be any good social work without access to expert medical practice. This is true equally in the prevention of suffering or in its relief, and true whether the concern is with mass betterment or with individual improvement. Whatever special line of activity occupies the worker, be it public or private, institutional or case work, the situation is the same.

### LESSONS FROM THE MEDICAL PROFESSION

In seeking to remedy bad social conditions, they (the workers) have come to recognise more fully the great handicap of bad physical conditions and have learned to welcome, in the effort to remedy these, the aid of a newer and more constructive medical science. Their awakening is due, in part, to their own deepened experience of human need but even more is it due to the socialized members of the medical profession who have led the way in many departments of social endeavor.<sup>1</sup>

Social workers today are a bit too proud of having socialized the physician. They feel that they have opened his eyes, so that he is aware not only of the fact that a man's heart may not be treated without complete consciousness of the rest of his body but also of the additional truth that he cannot be considered or cured apart from the larger social unit of which he is a fraction. The condition of his lungs and legs may well be less important than his income or his wife's tastes and temperament. Any visiting nurse or social worker can name a dozen points the physician sees now which formerly were invisible to him. Physicians, upon the other hand, do not see, or are too busy to note, how social work has improved since it

<sup>1</sup> Mary E. Richmond, "Social Diagnosis," p. 204.

realized and admitted to itself its dependence upon medicine. If the social worker has learned nothing else from the medical profession, there is at least the new value of records and more scientific method.

Many will be inclined to deny that the value of any record has been enhanced by contact with doctors. They point with scorn, and alas, with truth, to the deficiencies of dispensary records. But medical work has made records more valued. For long the best social case workers have known that their records, and the use they made of them, in the end determined the quality of their work. They did not have to point to the obscure and forgotten careers of missionaries to prove that work, no matter how good, is lost and as if never done unless recorded. They regarded as sacred and confidential records which might embarrass individuals or ruin reputations but when medical facts appeared on them, they learned that people's very lives and entire futures might depend upon a date and a diagnosis, or be lost through carelessness. It was then that records became as precious as babies.

Unconsciously, too, workers now follow methods long consciously practiced and taught by physicians. It is not without significance that a book for social workers is called "Social Diagnosis," but only recently have students and new workers been called upon to test their labors with a medical outline. It is beyond dispute that for social woes, the doctor's outline for physical ills should be followed. The order should never vary. Relief of symptoms should always precede, but should be followed by diagnosis, prognosis, treatment, scientific research and public education for prevention.

Even the most unthinking layman will agree to the necessity for any immediate relief of symptoms. No doctor will refuse to allay pain before he knows its cause. The trained social case worker must always have a plan which involves temporary relief first, with investigation afterwards. But this worker also, like the doctor, now demands diagnosis before further treatment. Some seek a prognosis also, although few are courageous enough to act upon it. Treatment, as with the physician, depends upon the individual worker, upon his knowledge and upon his acquaintance with remedies. Like most physicians, the majority of case workers stop at treatment and do not proceed to the further research and consequent possible public education for prevention.



Not only do the best methods of physician and social case worker thus resemble each other; either to succeed must imitate the other in borrowing from all science and all available knowledge. The one may belong to the finest type of the recognized professions, and the other, as Abraham Flexner asserts, may be of none, but both of them must recognize their mutual need. A great painter, a violinist, or an aviator may accomplish his full purpose with naught but the technical knowledge needed for his own pursuit, certainly without all knowledge or without that charity the absence of which makes all wisdom as nothing. No physician and no social worker, however, any more than the mother of ten children, ever knew anything which at some time did not prove essential or invaluable.

The social case worker must do more than imitate the physician in his method and in his tireless pursuit of learning. He must obtain from him also that technical medical knowledge which he alone possesses and the instruction and advice concerning its social application which he alone can give.

#### PRESENT AIMS OF SOCIAL WORK

Four centuries ago that ancient modern, Juan-Luis Vivés, said: "It is not only those without money who are poor; but whoever lacks strength of body, or health, or capacity or judgment," and "a common peril besets the citizens from contact with disease. . . . It is not the part of a wise government solicitous for the common weal, to leave so large a part of the community not only useless but actually harmful not only to itself but to others." He also said, than which there has been no truer word written: "the law of nature does not allow that anything human should be foreign to man, but the grace of Christ, like fast glue, has cemented all men together."

Yet, after all these centuries, only three years ago, Dr. Richard C. Cabot was compelled to say, with truth, "We have dealt with man's estate extensively. We are now in the heyday of the discussion of health of the body. We have just begun to see that the mind is the greatest of all questions for social workers. But that is for the future; we are still in the center of interest in health." He had to say also: "Health is still a separate section because it has not yet been welded into the whole thought of social workers." Centuries ago Montaigne declared that a man could not be divided for

the purpose of educating him but apparently it is not yet clear that he cannot be divided for any purpose whatever, even by the most competent and well-intentioned social worker.

Unfortunately, outside of the large cities, there not only is but little concern for health but too little provision for its maintenance. No social worker any longer listens with patience to the statement that the best comes from the country. So it does. Also the worst comes from the country—or the little town. Mark Twain possibly was right about its origin. A country-born baby may have a better chance to be healthy, if he lives; but he and his mother have less chance to live.

The social worker, like the plain citizen, is not constantly aware that men's lives and habits are determined by the ways in which they make their living; and that the ways in which they make their living are decided all too often by their physical condition or by mental conditions growing out of disease. Only the rich, and the poor of cities, may have adequate medical attention. This proposes to the social worker who knows it, all sorts of individual health problems and induces serious thought concerning the possible alternatives of social insurance and the complete public control of health.

Even ardent believers in democracy, in the equal chance for all, too often fail to see the necessity for primary physical fitness. Perhaps war will open some eyes. Men who believe in the power of income discount health. Those who know that health is important agree with Benjamin Ide Wheeler and discredit the character-making possibility of sickness rightly handled. But the social worker must deal with the whole man, his environment, his body and his mind and soul—his character.

#### NECESSARY MEDICAL KNOWLEDGE

In trying to improve a client's environment, the social case worker needs to know something of neighborhoods, schools, the local housing problem, industries, the employment situation, the comparative chances in certain lines of labor for a Jew, an Irishman or a Swede, for men or women, hours, wages, and the best way to approach an employer, actual or prospective. All social case workers know this but they do not all realize the same necessity for learning the prevalence of disease, the consequences of physical conditions, the character of the water and milk supplies, the existence and mech-

anism of their medical institutions and the most effective manner of dealing with physicians and surgeons. Yet, where a few years ago four-fifths of all the reference calls of the best known agencies were work references, today they are, or ought to be, medical references.

But how, one may well ask, can a social case worker know his own business and medicine also? Is it fair to require so much and such varied knowledge? Is it possible to obtain it? No, and no again. Neither is it necessary to do so. The most serious mistake a social case worker can make is to appear to know anything about medicine. Nothing is so maddening to a physician or so discouraging to the medical social worker as one who knows more about medicine than does the doctor. The inquiring social case worker who knows that an afternoon temperature always means tuberculosis, that osteopathy will cure epilepsy, that a patient with paranoia is "as smart as I am," that a skin eruption is syphilis and that syphilis at all times is a menace; a school nurse who herds in children for glasses and the removal of tonsils and adenoids—and nothing else; a city missionary who converts and protects girls but ignores their sicknesses;—these are pests and regarded as such in any medical quarter. Equally obnoxious is the child welfare worker who cannot believe that a boy is feeble-minded; the relief agency which insists upon a positive diagnosis on a first visit; or the probation officer who holds an epileptic responsible for all of his acts.

Can these workers learn enough not to make such mistakes if they have no knowledge of medicine? They can. Social case workers need only to realize in the beginning that nothing will save the situation unless good medical service is available. If such service cannot be obtained, the social worker's first business should be to create an agitation which will result in the provision of doctors and nurses. If they are available already, or can be found, then the social workers must trust them. They must know their own job so well and engage in it for such fine motives that they can believe in the skill and sincerity of others. A social worker has a right to smile when a doctor says: "This man needs his rent paid"; and surely the doctor may smile when a social worker says: "This man has tuberculosis." The medical social worker learned long ago to say, not, "This man has heart trouble," but "This man complains of his heart."

Social workers need no knowledge leading to medical diagnosis

or treatment. They should know, however, the causes and cost of those diseases which are social problems in themselves. They should know what these diseases are and why they entail a social burden. They should be concerned, not with disease, but with health. They should be able to recognize health and to learn what there is in the community which will maintain it for all.

It is not necessary for anyone but the doctor to recognize or to treat tuberculosis but many in addition should know that tuberculosis costs the community more in money and in sorrow than does any other one disease. The value of early diagnosis should be known and, for the individual case, what has been advised medically. A social case worker does not have to decide whether or not a patient needs hospital care but should know what hospital facilities there are and what will happen to the home of the patient should he leave it. No social agency has to conduct a hospital, only to know how hospitals are conducted, or, if there are none, how to get or reach them. It is still more worth while to create, in any community, such health as will decrease the demand for hospitals. In other words, social work must recognize the character and extent of disease, its own dependence upon the physician and the possibility of full coöperation with him. It must not encroach upon his territory or permit him to dictate unwisely outside of it.

#### PURPOSE OF THE FEDERAL CHILDREN'S BUREAU

The three times in a man's life when the social worker can accomplish most for him are the same periods at which the physician can do the most also. These are when he is a baby—with his mother—when he enters school and when industry claims him. It was Bernard Shaw who said that if the world and its affairs were as they should be, a man would need a doctor but once in his life, and that for his mother, when he was born. This is so true as to be tragic when the truth of it is ignored. Could every mother have proper prenatal care, inspection (for, after all, birth is not disease), instruction, confinement care, nurse and physician, the health problem would be more than half solved. In America, 300,000 children under five years of age die each year. Over half of them need not die. This is a waste of life, of vital energy, of time, and a cause of needless suffering which the country is no longer willing calmly to tolerate. The Children's Bureau proposes to save these babies through individual effort, by:

1. Registration of births.
2. Complete care, nursing and medical, for every mother, whether she can afford it herself or not.
3. Children's conferences and clinics.
4. Organisation of local bureaus of child hygiene.
5. Pure milk.
6. Adequate incomes.

The Children's Bureau was born of the child labor movement and fathered by the Department of Labor. Why has it deserted its own field, to enter that of health? It has not. This is but a logical step from its inception to the attainment of its own purposes. It looked into its own questions, made some research, and has turned to the right beginning, to the babies, and to public education for prevention of ill to them. Immediately, it finds itself leaning upon the doctor, the public health man, for instruction and guidance and upon the workers in each locality to look after each individual baby and, in the process, to educate the mothers. Nothing so clearly illustrates the circle around which one travels for the maintenance of health, the perfecting of industry and the consequent betterment of living. There has been enough of vicious circles. This golden one is to succeed them.

#### THE SOCIAL WORKER AND THE HEALTH PROBLEM

When the social workers, however, reach health problems, they come to them in many ways. There are workers within institutions, workers in the community, workers concerned with morals, with education, with relief, with health and those whose whole business is with sickness itself. The chief object of the workers necessarily modifies the manner of attacking the health problem.

The social worker should define clearly to himself his own job, realize in precisely what way health is necessary to its successful accomplishment and act accordingly. The worker in an institution should know that he or she has an opportunity to get everyone in the house thoroughly examined and treated and consequently may perhaps send them out in better health than they otherwise ever could have had. This is his business. A girls' school which does not examine all sent in for immorality, a prison which fails to learn who is feeble-minded, who is insane and who tuberculous, is a curse, not a safeguard, for its people. An orphans' home which ignores the physical condition of any child is unfair to all of them. A jail

usually is more dangerous than any mediaeval plague spot. But the whole business of a social worker in an institution is to see that his charges are placed in the hands of a good doctor and to enforce that doctor's orders when given. He needs to know, not medicine, but the comparative value of health and the social destructiveness of disease.

For the attendance officer, the charity organization agent, or the children's worker in the community, the affair is not so simple. In a large city where there are well-known and excellent dispensaries and hospitals with social service departments, all the worker has to do is to learn their location, mechanism and peculiarities. After that, the word of the medical social worker in the medical institution may be sufficient. In the smaller community, the affair is more serious. An attendance officer who is now a medical social service worker was asked where she got her first medical experience. She said that she had obtained it when a truant officer in a village. Then she had had to learn, not how to enforce a compulsory school law, but how to rid her clients of vermin and how to distinguish impetigo from cancer. She had learned further that it was easy to find doctors, to ascertain their hours and the extent to which she could impose upon them. Such imposition is justifiable and necessary as yet and the doctors have never complained, but social workers certainly should realize, whether anyone else does or not, how much free service the average physician gives, and how desirable some better and fairer method is than the one now in use. Outside of the institution the social case worker then needs to know thoroughly all of the medical and nursing resources of the community and how to use them with the least trouble to busy doctors and nurses and with the maximum results for his own people.

A social case worker should also try to inform himself concerning some of the simpler questions of hygiene and the common and best known facts about disease. There is no doubt that, other things being equal, the worker today who has had some experience or training in a medical social service department is more valuable than any other for any variety of case work. This is not because he has learned medicine but because he has come to know how to use the medical knowledge which is available and has acquired something of the medical point of view toward the patient.

"Social workers have been handicapped even in their use of



these sources of information by their lack of knowledge of even the most elementary facts of disease and by their lack also of understanding of the organization and discipline necessary in a hospital or dispensary."<sup>2</sup> Moreover, the organization and discipline to which a good medical social worker yields is in itself training too often denied the average social worker who, to be effective, is necessarily something of a free lance. A student who has had to observe dispensary rules and to remember that every one is sick, never makes the stupid blunders about health and doctors of which other workers are certain to be guilty, although he may make worse. The medical worker is always as much interested in incomes, housing and occupation, as is the relief agent; but the latter is not always equally concerned about health questions.

More and more, therefore, where it is possible, general social workers are acting more closely with nurses and the medical social workers in hospitals and dispensaries. It is easier and more effective thus to divide the job. Perhaps the greatest concern of any worker in the community should be to see that there are enough and the right sort of medical institutions properly equipped with medical social workers, while most certainly the chief concern of all should be that prevention of disease which alone will decrease the necessity for so much medical care.

Objection is made to such coöperation. It is claimed that the visiting nurse is too often blind to social and relief situations and most untaught in social procedure. She will ask for eggs without number, no matter what the price. Worse, she may insist wrongly upon unwise aid for a sick woman whose husband has deserted her. Upon the other hand, it is the nurse alone who knows efficient, and therefore economic, forms of relief for the sick and she may be the first to discover some sorts of illuminating information never given to any but doctors or nurses.

Objection is made further that the necessity for such coöperation works for harm because it sends too many people into one family. The layman is always aroused by such so-called duplication of work and the intrusion upon the individual's privacy. To be sure, until the war is over, less will be heard about intrusion upon privacy. As for sending too many people into one family, it is well to remember the answer of a certain Boston worker when the ques-

<sup>2</sup> Mary E. Richmond, "Social Diagnosis," p. 255.



tion of referring unmarried mothers to other agencies was discussed. She alone thought it all right to transfer such a patient and added, "You only give her another friend." That is the point. The relief worker who tells a client who is going to the dispensary as a patient to be sure and see Miss B——, the social worker, makes another friend for a woman who has too few acquaintances wiser than herself. This has a further point, if it is remembered that in the final analysis the social worker can justify his existence in but two ways, by what he can teach and by what social chasms he can bridge.

### THE SOCIAL WORKER AS TEACHER

What any single worker can do for an individual person, all that he can accomplish in one long day, will never prove his value unless he also is always a teacher, and one who remembers that the best teaching is by example. The social worker is the modern neighbor. He must not only be a teacher but at all times an additional connecting link between the normal and the abnormal, between the fortunate and the unfortunate in a world which grows too complex for most. It is, therefore, an advantage to specialize in social work as well as in any other profession. The client may have as many friends as he has varieties of troubles and each will make an additional link in the chain which binds him to a better part of the community which he represents. Such a social worker, primarily concerned with other than health problems, needs only to remember the value of health, its relation to his own questions, to recognize its absence, to know where to go for it and how to obtain the nurses and medical social workers as well as doctors who are needed for the maintenance of health and the prevention of disease in his community.

A very just objection to this attitude is the fact that it cannot apply to rural communities. These force upon the social worker, even one interested only in sick individuals, not only local problems of nursing and medical attention but the larger ones of education for health and public control. Such a violent departure from the present situation may well arise from agitation in long neglected country districts.

The medical social worker has a certain value another has not, both for health problems and for social problems connected with them. From the doctor she<sup>1</sup> learns what social relief must be added

<sup>1</sup> "She" rather than "he" is here used in referring to the medical social worker as in the vast majority of cases if not universally, such workers are women.

to medicine for the alleviation of physical pain; she knows not only the medical diagnosis but in how far the social diagnosis depends upon the condition of the patient's body. She is better able to say what the social prognosis will be for a sick man; and she certainly can give not only to other workers but also to legislators and even to doctors, illustrative arguments for new social laws and procedures. Not only that, she sends her patients out to teach health even as other social workers send theirs out to teach facts about labor, housing and community life. If one good housekeeper in a city block may teach ten, the woman who has all of the babies "measured" is the one who should be converted to the use of pure milk.

The medical social worker was born not only of the public's increased desire to alleviate misery, to make medical work more effective or to teach for prevention rather than to relieve. She came into existence primarily as a "logical result of the recent advance in medicine."<sup>4</sup> No better explanation can be given than to continue:

The social service department has a still higher office . . . . . namely, the aggressive campaign toward the prevention of disease. The recent advance in medicine shows that nearly all of the most serious conditions are easily curable if treated early enough, while many others are more easily prevented than cured . . . . . and since the most important cause of social dependency is sickness, those charitable organizations whose function it is to relieve conditions of poverty, see in hospital social service an agency which in time will lighten their burdens, although in the beginning it may appear to increase them. Indeed it may be said with confidence that social service departments in connection with our busy hospitals and dispensaries will in the future be the most potent means for the prevention of disease, and, therefore, of the miseries which so often are the result of disease.

The medical social worker differs from other social workers only in that she deals with sick people, and that, unlike all others, she is always found within, if not as an integral part of, another institution, a medical institution. A man may be poor or immoral or a woman may be in distress but unless there is also physical suffering their care is no more the concern of a medical social service worker than of a church or of a relief agency. Moreover, they come to the attention of the social worker within the institution of which she is a part and have themselves sought that institution, and

<sup>4</sup> Charles P. Emerson, "Social Service and Medicine," Report of the Social Service Department, Indiana University, 1911-1912.

consequently the worker, first. This worker extends into the surroundings of the institution the ever widening circumference of its influence, instead of attacking similar problems in the community itself.

### THE POINT OF ATTACK

Like charity organizations and the church, a medical social service department concerns itself with the whole man but its point of approach and the method of attack are different from that of either. The primary business of the medical worker is with the cure or relief of disease but to obtain her results she must consider character quite as carefully and sacredly as does the church; prize education as does a school; join public health movements and daily distress herself with problems of relief. While medical social service is one, and the most recent, manifestation of the growing public health movement, and is a part of the public demand for the abolition of poverty and the decrease of all needless suffering, it must never be forgotten that, above all, it is the latest outgrowth of modern medicine. Today, therefore, advancing social work of any sort must be linked with scientific medical work. The hospital and the dispensary which cannot give a high type of medical service should waste no time on social service. The social worker in a community which offers no fine medical service is wasting most of her time and money. If communities are to deal with the social problems which have been in their midst for centuries but are being revealed slowly by city life or swiftly brought under the limelight by war, these communities must have trained social workers, conscious of the value of health as well as of economic and spiritual good, and must also have splendid medical work.

### WHAT PROBLEMS ARE MOST IMPORTANT

In this connection it may be interesting to note what social problems loom large to the medical social workers. One department furnishes a list of the social ills which have come most often to its attention and have made for it the most work or the most anxiety. These are: alcoholism, babies born in hospitals, broken families, cardiac troubles, cripples, children, drug habitués, epilepsy, eye troubles, feeble-mindedness, foreigners, gonorrhea, illegitimacy, industrial accidents, diseases and maladjustments, sick inmates of

state institutions, insanity, negroes, sex problems, suicide, syphilis, tuberculosis, unmarried mothers and vagrants. This classification of social ills, most of them recognized only as diseases, is peculiarly worthy of note at a time when the government and the Red Cross also are trying to maintain health and social equilibrium. A certain army surgeon lately stated that in his opinion the greatest problems after the war would be: broken families, crippled soldiers, tuberculosis, mental and nervous complications, heart disease and venereal diseases. The social service department which offered the above list had found to its astonishment that its greatest problem was the broken family. It had more broken families than any other one trouble. Next to broken families and children, it was most concerned about cardiac patients, mental and nervous cases, and after them, the tuberculous and syphilitic. In other words, the war will create no new problems for social workers, but will only reveal or emphasize those already existing, especially those of death and disease.

Social workers who are in the habit of thinking of their social problems in other terms, economic, moral or mental, should notice how closely their ills are interwoven with these medical-social questions. It is worth while also to see which of these have been abandoned by the case worker. No social worker any longer believes that the time and money spent in an effort to reform a single drunkard are spent most worthily. She wants to see prohibition tried. There is no medical social worker who is not ready to ask for the public control of venereal disease, and for more institutional care for the feeble-minded, insane and epileptic. Because of the tragic cardiacs and the tuberculous she cries aloud for prevention and education rather than cure. The proved decrease of blindness, with the increase of eye troubles which keep children from school and impair the efficiency of workers, even more illustrate the criminality of indifference to prevention.

It has been said that every patient who enters the door of a dispensary is a social problem. Thus far, this is true. It is equally true that all social problems involve questions of health. Some day the public will be as impatient with people who are not well, who are not able-bodied for their jobs, as it is now with the man who cannot reach work Monday on account of Saturday's drink.

All social workers must take more and more into consideration

the problems of health, both for the individual and for his community, while the medical social worker should study more and more the larger social questions. If no social worker can know too much, no medical social worker ever knew half enough. In the beginning it was thought that such a worker must be a nurse. In some cities she still must be. Nevertheless, it is an admitted fact pointed out even by their leaders, that the nurses who make good social workers do so, not because they are nurses, but because they have ability in another profession as well. Social work, even medical social work, is not nursing. The average nurse, moreover, lacks general knowledge of people and affairs and is less likely to have the necessary broad education. Not only that, her training tends to close her eyes and dull her natural initiative; whereas, a social worker, if she succeeds, must have and use science, imagination, daring and ingenuity. As yet, she is most often a woman, and all of the qualities which a great mother or a successful teacher needs should be hers. For the patient's sake she should have imagination, sympathy and good judgment. She should be just, as well as kind. For her own sake she should have good sense, good health, wholesomeness of spirit, a sense of humor and unconquerable faith in folks. She should have a true knowledge of the texture of normal society, of modern social problems, of the inter-relation of dependence and disease. She should know humanity, out of her own experience with it or her belief in One who knew. "He looked out from his Cross upon a jeering multitude, symbol of the vaster multitude who forever jeer and crucify the good, and there He performed His supreme miracle. He believed in them. He saw what was in them."<sup>1</sup>

Such a worker will never be blind to, nor lose sight of, any of the ills of her client or patient; never fail to seek the underlying cause of his trouble, either in his own life or in the society of which he is a part. She will never fail to seek medical care or advice for all who need it. But she also will advise and urge more education concerning health, more frequent routine examinations of babies, school children and workers. She will insist upon measures to lessen the state's vast expenditure for social wreckage due to disease and to increase those for the promotion of universal health. Such

<sup>1</sup> William Lowe Bryan, "He Knew What Was in Man." Indianapolis: The Bobbs-Merrill Company, 1913.

a worker will argue with wisdom concerning the just expenditure of effort and money and the possibility of success with the individual case, or, in losing it, will be comforted by the use of it as educative material which may serve to save others from similar fates. Any social worker who would obtain the greatest result, socially or medically, must forget himself in the pursuit of good for his client. He will get for him all that he can of income, health and happiness; but he will never forget that what he does or fails to do, if recorded, will add to human knowledge and echo to the end of time.

## PRINCIPLES OF CASE WORK WITH THE FEEBLE-MINDED

BY CATHERINE BRANNICK, M.D.,

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The subject of feeble-mindedness is now recognized as one of the most important educational and social problems of the day because of its relation to other social problems. Various researches have shown that it complicates practically every one of our social questions, poverty and dependence, delinquency, vice and crime, inebriety, vagrancy, unemployment and industrial inefficiency. Numbers and relative increase are the important factors in the problem: it is estimated that three in every one thousand individuals in the United States are feeble-minded, making a total on this basis of 275,000; in proportion to their population they are increasing at practically twice the rate of the normal population. The burden is heaviest in the fields of delinquency and crime: 48,000 feeble-minded persons are committed yearly to correctional institutions in the United States, and the percentage of feeble-minded within these institutions is variously estimated from 15 per cent to 50 per cent.

As research has demonstrated the widespread significance of the problem, methods of meeting it have multiplied, with the idea of prevention leading. At present thirty-two states make some provision for this group in special institutions. In many cities special classes have been established under the public school system providing a curriculum adapted to their needs. A few states have passed permissive laws providing for sterilization and in effect debarring marriage under certain conditions. The department of immigration has recognized the problem by more careful examination and observation of the immigrant. An educational campaign has been directed by numerous organizations throughout the country interested in eugenics and mental hygiene and a special committee, national in scope, was organized in 1915 with objects "to disseminate knowledge concerning the extent and menace of feeble-mindedness and to suggest and initiate methods for its control and ultimate eradication from the American people."

All forms of treatment revolve about the special institution for



training and segregation, but it has come to be accepted that it is impracticable and even undesirable to work for such provision for all members of the group. There can be no question but that institutional treatment is the most economical and the only rational one in the case of the low grade, the intractable and the clearly unprotected. On the other hand, it is quite as evident that given proper personal and social treatment, many more of the group will be safe and fairly useful members of the community. These two ideas, segregation limited or permanent, and special training with directed oversight in the community, are the guiding principles of the plan of treatment outlined by the mature and progressive students of the problem. In Massachusetts, which already leads in its provision for the feeble-minded, a state program has been outlined by the League for Preventive Work which methodizes these ideas. The program, known as the Fernald plan, provides care for the known defectives according to their individual needs and methods of finding others. It includes:

- (1) A state commission
  - (a) for friendly guidance of mental defectives who under supervision can live wholesome lives in the community,
  - (b) with authority to safeguard in a state school those who cannot.
- (2) A state-wide census of the uncared-for feeble-minded
- (3) Clinics for mental examination easy to reach from all parts of the state
- (4) Special classes in public schools for mentally defective children
- (5) Special treatment by the courts of mentally defective delinquents
- (6) Completion of a third school for the feeble-minded

In addition, the State Board of Education is "planning a State-wide investigation to determine the number of subnormal children not being provided for in institutions," with the idea of formulating a state-wide policy for the special training of these children. It is hardly probable that such a model plan can soon be carried out in its entirety even in the most progressive states. Certain of its most important principles can be tried out, however, even in those states which are most backward in providing for the feeble-minded and chief of these is the principle of individualization of treatment.

The idea of applying this principle to work with mental defectives is new and as yet not very acceptable to the general social worker. In the words of one of these workers, "there's no such animal as case work with the feeble-minded." The assumption has

been that once an individual has been diagnosed as mentally defective, there is nothing more to be done unless he can be shut up in an institution. This attitude disregards the facts that variations and types of mental defectives are as many as among the normal; that many who must be graded as mentally defective are in a limited degree socially competent, are making a poor but adequate living, and so have escaped the attention of the social agencies; that social incompetence or inability to manage one's own affairs as used in the definition of feeble-mindedness may be modified by special training and oversight.

Recent figures of psychological tests given to the drafted men of the United States Army show that approximately 2 per cent of the men are mentally inferior. Their services, nevertheless, are to be used within the army in forms of work suited to their intelligence, —in the care of horses, carting, road repairing, etc. The inference is that there had been no expression of social deficiency, to any degree, in these men previously.

Feeble-mindedness is best defined as "social incompetence due to arrested mental development." It is therefore more inclusive than the term "mentally defective" and is used in a double sense,—a psychological and a social one. It does not imply an absolute lack of possibility for social competence, but only a limited or relative one. The definition of the British Royal Commission (1908) specifically defines an individual of the highest grade of feeble-mindedness as one "capable of earning a living under favorable circumstances, but incapable from mental defect existing from birth or from an early age of competing on equal terms with his normal fellows, or of managing himself and his affairs with ordinary prudence." In practice, the two aspects of feeble-mindedness, defective intelligence and social deficiency, are found combined in varying degrees. Many of the relatively low grades of intellectual defect show no special anomaly of temperament and disposition and grade fairly high by the social test; many others who grade relatively high in the psychological sense show such temperamental eccentricities as to make social adjustment impossible.

Although constructive work with the feeble-minded outside of institutions is as yet comparatively new and undeveloped, it has already demonstrated the possibilities of modifying the social inefficiency in certain types so that they are acceptable and fairly

useful members of society. Classes for subnormal children in Springfield, Massachusetts, in Boston, New York and other cities not only have given specialized education and training, but through the personal interest of the teachers or specially appointed visitors from the schools, the children have been followed into their working life and the necessary help and supervision given in industrial adjustments.

It is well to dwell on the hopeful and positive aspects of individual treatment of this group for, whether the eugenicist and social reformer will or no, the feeble-minded will still remain in the community. In Massachusetts, the leading state in institutional provision for the feeble-minded, there are as yet only one-fifth of the estimated number in the state so cared for.

Since institutional care for all of the group is obviously out of the question, the next consideration is the classification of types to fit the two main divisions of treatment, institutional and community. This classification would be based on considerations covering in general the personal and social factors in the make-up and immediate surroundings of the individual, as:

- (a) Age
- (b) Degree of mental defect
- (c) Inherent and innate characteristics other than the purely intellectual
- (d) Possibilities for special training in the community
- (e) Possibilities for protection and supervision
- (f) Development or no of anti-social habits

Feeble-minded women who have passed the active sexual period and show no special emotional irregularities should be able to fit into community life under supervision. Men with no anti-social tendencies are often found self-supporting and fairly useful workers in many of the lower forms of industry. These are the men so often described by their employers as "honest, faithful and industrious, but not over bright." Very young children should not be allowed to crowd the institutions for the feeble-minded, to the neglect of more urgent and suitable cases. Frequently parents ask for the commitment of such children to be rid of their care, and social workers are often found aiding or encouraging this, though the case may present no special problem in itself nor even in its relation to the family problem.

It is of course self-evident that the lowest grades of mental

defectives, even young children, unless physically and socially well cared for, should be in institutions. This is the type which fits very fairly into other institutions than the special ones for defectives. Above these grades, the decision as to the form of treatment will be based more largely on the temperament and disposition of the feeble-minded individual than on the degree of purely intellectual defect. Even when the community offers good opportunity for special training, the decision between institutional and community care will still depend on the individual, on the probabilities that he can be made industrially and socially efficient to some degree. Is there possibility of adequate protection and supervision? Has he the physical capacity to get on outside an institution? Are his innate tendencies such that he is unlikely ever to fit into community life? Is he lazy, cruel to his weaker companions, sexually over-active? Is he innately irritable, stubborn, destructive and abusive in temper? Is he untruthful, sly or thieving? If these or other innate tendencies that have an anti-social bearing are present in the feeble-minded, then institutional treatment is the choice, irrespective of degree of mental defect, or special ability along industrial lines, or opportunity for training in the community.

Any industrial or reform school can give plenty of evidence that it is not the intellectually higher types that should be kept out of institutions for the feeble-minded. The directors of these schools complain that most of their troubles of a disciplinary nature can be traced to these defectives, and one director goes so far as to say that there is no incorrigible prisoner in his reformatory who is not sub-normal.

As found on commitment, there is no doubt but that the majority of these defective delinquents are troublesome beings, but there is always the question whether a certain number might not have been improved to the point of relatively fair social competence, by individual treatment in the community earlier. When a feeble-minded boy or girl is recognized as such for the first time in a reform school, it is sometimes difficult to separate innate characteristics from acquired bad habits and influence of environment. Mental defect and mental instability frequently are present in the same individual, but the instability observed in the adult feeble-minded is undoubtedly due in some instances to environmental over-stimulation acting on defective inhibitory powers. This is illustrated in

reformatory experience the opposite of that of the superintendent's described above, and it sometimes happens that a feeble-minded individual, whose conduct in the community kept his relatives and the police busy, gives no trouble when under restraint in an even environment.

The classification of defectives for the purpose of outlining treatment should form a part of the diagnosis in every case, and for this reason is work for the expert, capable of giving clinical consideration to all the characteristics of the individual, physical, mental and temperamental, and of evaluating them in their relation to his environment. A simple diagnosis without recommendation is not much more helpful in the fields of psychology and psychiatry than in the field of general medicine. Any one who has had to deal with problems of delinquency or other forms of conduct disturbance, knows that when the psychologist has said that an individual is or is not feeble-minded, he has said the least that can be said. If the person is feeble-minded, the conduct disturbance may or may not be directly related to the mental defect, while the bald statement that he is not feeble-minded leaves his conduct disturbance wholly unexplained. An interpretation of the individual is the only helpful diagnosis and is as important in the case of the feeble-minded as with the intellectually normal who present behavioristic problems.

Such interpretation is absolutely essential to the intelligent handling and oversight of the feeble-minded in the community. The outlook at best may not be encouraging but the problem is there and must be met. All too frequently it happens that the institution is non-existent and that the community form of treatment is the only possible one. When one knows the individual, that he is defective to a stated degree, that his defect is or is not transmissible, that he has certain socially favorable characteristics that must be deliberately fostered or socially negative tendencies that must be deliberately repressed, it is possible to work with hope that is not overhopeful.

In the handling of feeble-minded children in the community, one can do no better than borrow from the principles and methods of the special institutions and classes that have already been successful with them. The most successful of these appear to have applied education to defective children in its literal sense, a "drawing out" what is in the child more than a "pouring in," irrespective

of ability to hold or digest, as seems to be the interpretation of education in the ordinary school. They search out special aptitudes and develop them; they deliberately take advantage of the strongly imitative and suggestible qualities, and exercise these qualities for good; in the absence of any ability on their own part to build up a true morality, the children are given a superficial morality by punishment or deprivation when they do wrong, and reward or praise when they do right.

If the child is in the regular graded school room, it is very necessary to watch lest he be given tasks that are quite beyond him and pushed to the point of mental irritability. The knowledge acquired in school is much less important than the habits formed and the attitude toward life and work. A habit of failure acquired in school is as bad for the feeble-minded child as for the dull normal, and quite as often follows the child into his working life. If he is the type of defective who has insight into his own dulness, the habit of failure may be accompanied by a discouragement which is very difficult to overcome.

Two excellent examples of individual work with feeble-minded children in the community were observed by the writer in connection with work in an open air school, having two teachers for fifty pupils, and a resident nurse. One of these was a girl of thirteen and a half years who had been in the school for three years and in that time had completed only one grade. Physical examination on entrance and at the time observed showed nothing more than poor general condition. At the time of observation she had been promoted to the fifth grade, but was not by any means doing the work of that grade. By all forms of psychological tests she graded as feeble-minded, passing just over nine years by the Binet (1911) scale. The teacher's report was that she was abnormally quiet and reticent when she entered the school, but a likeable girl on the whole. Her dulness had been recognized, and she herself seemed quite as conscious of it as the teachers. The school's efforts to overcome her reticence showed excellent results in the girl's general attitude, though she was still very sensitive to her dulness. Some fear was felt when she left school at fourteen that her old reticence might make it difficult or impossible for her to fit into industrial life, but she found factory work at seven dollars a week and still kept the work when last heard from eight months later.



The other pupil was a girl about whose age there was some doubt,—the school giving her age as thirteen and a half and her mother as fourteen and a half. This girl was recommended to the open air school primarily as a conduct problem, although the grounds for admission were present in the very poor general physical condition. The history as given was that she had been growing more and more troublesome for a year past, and recently had become quite incorrigible in the class room. She would thrust her tongue out at the teacher, make faces at the other pupils, etc. The principal referring the girl thought it a case of beginning psychosis. She was in the fifth grade. An older brother had also been very troublesome during his last year at school, in the fifth grade, and had been transferred to the industrial room.

Psychological examination showed an unmistakably feeble-minded girl, mental age by the Binet scale being less than nine years. When first admitted to the open air school she reacted in the class room as in the previous school, and gave considerable trouble even in the recess and rest periods. After two weeks trial, it was decided to take her out of the class room, but to let her remain in the school, taking her rest periods with the other pupils and helping the school matron during her class periods. Her improvement was so marked that the consent of the principal was asked for the continuance of the plan. There was no further conduct disturbance though she continued to be noisy and boisterous in play for the first few months. She remained for that school year, her only school work in that time being selected reading. On leaving school she found work in a factory at \$7.50 a week and was at the same work when last heard from eight months later.

The home as a factor in the training of a feeble-minded child is of course even more important than the school. Where the home is not in itself capable of giving adequate oversight, the assent and coöperation of the parents are manifestly necessary for supervision from the outside. Under authorized supervision from a central state agency, this question of coöperation would probably never arise, even though the actual visiting were delegated to local private agencies. It is unlikely, however, to arise in the case of any home that is capable of properly training and protecting a feeble-minded child. With the children themselves there is rarely any difficulty in approach,—they do not question motives as the normal child.



The parents should be told very frankly any special points in the diagnosis and recommendation and be given specific instructions from time to time as to methods of handling the child. Especially should they be warned of the necessity for the formation of regular habits and the dangers of overstimulation. Ways of fostering the socially positive qualities of the child and combating the negative qualities should be gone over in "words of one syllable," if need be. All work should be directed to the formation of good habits and the avoidance of bad.

Ways of keeping the child's interest in the home should be devised; a habit of reading should be encouraged and books selected for their possibilities of pointing a simple moral without any special stimulation; simple games that give the child a fair chance to win should be provided from outside if the family cannot provide them. Any musical ability or interest of the child should be fostered.

While the child is still in school the question of the kind of work he is likely to do later should be considered. It is well to plan for this as near the home as possible to avoid the expense of carfares and the many undesirable distractions that car-riding involves. Lack of ability to do certain forms of work does not handicap the feeble-minded so much as lack of ability to attend to the job. For the child who has been deliberately trained to a fair degree of stick-to-itiveness, this will be much less of a handicap and he should fit very fairly into many forms of unskilled factory work.

Possible employers should be interviewed and interested in the practicability of employing such children. Their response is often surprising. They take the rather sensible stand that it is as well to employ people about whom the worst is known as to run the chance of getting the same people through the regular employing channels and know nothing of them. One of the most encouraging and heartening experiences that come to the tired social worker is the encounter with the kindly employer or foreman who says he is willing to give the defective child a chance and who gives much more than a chance; the effect of his friendly supervision is shown later in his confidential opinion that the doctor who said that particular child was feeble-minded doesn't know his business. This kind of an employer and especially this kind of a foreman is really not an isolated instance.

A point to be especially emphasized in work suitable for the

feeble-minded is the possibility for supervision. The best and most complete special training can never make of the defective anything but a helper. There is no exception here even in the case of those defectives who have special abilities along certain lines, for although they may be able to do the actual work done by a carpenter or a plumber, they cannot plan as a carpenter or a plumber, or work independently.

Both social workers who give supervision and even more the families of the feeble-minded persons are apt to forget that a fair amount of recreation is as necessary for the defective as for the normal, and that it is quite natural that he should desire the particular forms of recreation the rest of the community enjoy. Games in the home, music, reading, fancy work, are not sufficient when all the rest of the world, including other members of his own family, are attending moving pictures or a band concert. Outside recreation should be planned for in a degree which does not cause overstimulation, and under supervision which is not so obvious as to arouse antagonism.

In dealing with the adult feeble-minded individual who has been recognized as such for the first time as an adult, one realizes that the most important part of the program of work for the feeble-minded is the provision for methods of early diagnosis. As found, he presents a problem of mental defect with all that it implies of lack of judgment and control plus well established habits that are difficult or impossible to break. If these habits happen to be actively anti-social we have what is so popularly known as the defective delinquent. Treatment of this type outside an institution is practically never successful and institution directors who have dealt with them will say that treatment within any ordinary institutions is quite as unsuccessful. Mental instability is more prominent than mental defect in practically all of these cases,—they are not merely untrained feeble-minded. The mental defect, however, is there, and the community should treat them not as delinquents but as the doubly defective individuals that they are.

Work to make the defective safe for the community should go side by side with effort to make the community safe for the defective. This to be effectual must cover a wide range, from education of the community on the significance of feeble-mindedness and the necessity of special provision, to the enforcement of all laws for the protection of children and the security of public morals.

Just as the methods found specially adapted to the teaching of the feeble-minded have contributed much to the educational methods applied to the normal child, so the social treatment of the defective on the individualistic basis is bound to point the way for better methods of dealing with social problems among the normal. So-called individual work with the normal group is much more frequently personal than individual, and failure in the social handling of the normal individual is undoubtedly often due to this fact. The obvious defects in the feeble-minded make it necessary to search out and determine the value of any positive qualities that he may possess and weigh them against the defects. The psychologist or psychiatrist in interpreting the individual furnishes a basis upon which truly constructive work may be done, when the social worker knows the best and can foster it and knows the worst and can fight it.

## CASE WORK IN THE FIELD OF MENTAL HYGIENE

BY ELNORA E. THOMSON,

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The attitude of mind of the social worker—perhaps especially in the field of mental hygiene—cannot be better stated than in the words of Dr. Meyer quoted by Miss Richmond: "A willingness to accept human nature and human doings as they are before rushing in with the superior knowledge of how they ought to be. The first need is to know *what* they are." The motto of every social worker and investigator should be that of Terence's Heauton Timorumenos: ". . . . One who investigates must be . . . . ready to accept . . . . anything human beings think, feel or do as not altogether strange to human nature: 'I am but human and I do not consider anything foreign to me'; it is at least worthy of human consideration."

This implies forbearance with the patient, the relatives, especially those by marriage, other agencies,—already wearied with much effort in the patient's behalf—the courts and the state officials. It implies also an ability to reflect the patient's point of view and not one's own, to report symptoms and to know facts. Above all it implies honesty and straightforwardness in dealing with all concerned.

Patients are referred to the mental hygiene social worker in many different ways: in person, through other agencies, through relatives, physicians, institutions, neighbors, courts, schools, etc. and always because of some form of unusual behavior which may manifest itself in an inability to adjust to surroundings, or to acquire knowledge, deep melancholy, addiction to drugs or to alcohol, unreliable or irrelevant statements, ideas of persecution, unusual demands, threats against individuals or groups, etc. It necessarily follows that any plan for investigation must be elastic to meet the demands of the individual case.

The first contact with the patient is often extremely difficult and the successful worker in this field must be resourceful and a responsive listener. Miss Richmond writes:

The important things in initial interview are privacy, absence of hurry, frequent change of topic with some deliberate padding to ease the strain, particularly "when irritation begins to adulterate the account," and yet through all a clear conception on the part of the interviewer that a certain goal must, if possible, be reached, and a slow, steady, gentle pressure toward that goal—this, in brief is our program. Giving the patient all the time he wants often leads to that fuller self-revelation which saves our time and his in the long run. Pressure of work! Lack of time! How many failures in treatment are excused by these two phrases! But wherever else the plea of lack of time may be valid, it is peculiarly inappropriate at this first stage, for no worker ever has leisure enough in which to retrieve the blunders that result inevitably from a bad beginning.

If the first interview is successful a friendly relation with the patient will have been established and can be maintained during the period necessary for further study before making a plan for examination and treatment for, unless this interview or the history obtained from other agencies has brought out symptoms which indicate that the patient is a definite menace to himself or the community, it is usually wise to delay a clinical examination until the social history is complete, for the recommendation of the specialist as to treatment whether institutional or otherwise is often dependent on the social history. In other words, a chronic mental case in which treatment is unlikely to be of benefit and only custodial care is required, is institutional or not according to the reaction to the hallucinations or delusions as shown by the social history. The modern clinician with his well developed social attitude is unwilling to make a recommendation without such history.

Thus the social service worker in the mental hygiene field must know the value of evidence. All the primary work must be for the purpose of the mental examination and must be truthful and exact. Curious experiences are often founded upon fact and must not be termed delusional until their unreasonableness is clearly established. Symptoms of physical disease must be noted and if indicated a thorough physical examination secured and the findings submitted with the social history at the time of the mental examination.

In the gathering of this history which must take into account both heredity and environment, the well trained worker knows the evils arising from too much questioning of the patient and avoids anything which simulates a mental examination. An indiscretion here may make more difficult the later examination and the treatment which is to follow, for an examination that does not lead to a

plan for treatment is of little value. A word here should be added against the very common practice of taking a patient from clinic to clinic. This is not only unprofessional on the part of the worker but often results disastrously for the patient, who soon loses confidence in both social workers and physicians and becomes an even more puzzling social problem.

Numerous difficulties, however, are likely to be encountered in efforts to work out plans for treatment. Frequent statements like the following will be given the worker: "This patient is not in need of institutional care but needs congenial work in a good environment with understanding direction." Practically the only way to meet the need of such patients is to establish, in connection with the field work, an occupational department where training and employment under skilled supervision can be provided. In establishing such a department the prime necessity is, of course, the director, who must be a well trained teacher who understands abnormal individuals and not only knows various handicrafts but can also teach her pupils to produce articles which have a sale value; for such a department will not be a success unless the patients have the incentive of economic return for their efforts while working in the department. The result hoped for is such a readjustment of the individual as shall later make possible positions in regular industrial lines. This will be possible in a considerable number of cases, but if this cannot be accomplished at least there will be brought out the reasons why the patient can not readjust and so make possible a working plan for continued treatment in or out of an institution.

Some patients can get on very well under such continued supervision as a department of occupation gives and can contribute largely to their own support while they would otherwise be entirely dependent. Another group of patients will be found, after a period spent in the department, to be a menace to themselves or to the community, and with the information gained in daily contact, commitment to a state hospital is made possible. Still other patients needing hospital care, who will not at first consider it, can later be induced to go as voluntary patients.

Then there is a group who are not a menace to themselves or the community, living in their own homes, chronic shut-ins, whose lives can be made much happier by occupations which can be taught

them by a field teacher; the economic return may be very little or nothing, but there is a distinct therapeutic effect which will at least make for less complicated family situations and certainly add to the sum total of human joy.

The following case histories taken from our records may serve to illustrate.

#### PROPHYLACTIC

In the fall of 1914, a Syrian, 30 years of age, came to the United States with his wife and children. He was unable to speak the English language and such friends as he had were unable in that time of financial depression to find any work for him. He had a little money which gradually disappeared. He had been trained to work in metals and had brought with him to this country a little stock of silver jewelry, thinking by the sale of this he could increase his capital, but he could not sell it because he knew of no market. He became more and more depressed and finally so deeply melancholy that his wife, fearing he would take his own life, appealed to some Syrians whom he knew. One of these Syrians was a patient of the Mental Hygiene Society and brought this man to the office. He was sent to a physician for physical and mental examination and returned with a statement that his melancholy was probably due to his inability to obtain employment and the prescription was work.

Work was provided for him in his own line in the occupational department. It was possible to find individuals interested in the silverware and some was sold almost immediately bringing in a little money; orders were secured and the man gradually came to look upon life from an entirely different viewpoint. During this time the statements made by the patient were verified and at the end of six weeks a position was found for him. Very shortly he was promoted and things have gone well with him ever since until now he is part owner of a prosperous grocery business in a neighboring city and is very sure that, but for the understanding aid given at his time of special stress, he would have taken his own life, for he was convinced that if he were out of the way his wife and children would be cared for by kindly disposed individuals, but that an able bodied man should be self-supporting.

#### VOLUNTARY

Patient referred by another agency in the following letter:

We would like to refer to you the case of A. P., 17 years old, living at ——. There is a history of insanity in the family and one of the younger girls is very nervous. A. has lately developed a mania for cleaning everything around her.

She had a position in an office but finally could not be persuaded to do anything but clean her desk, etc. and had to be dismissed. She does the same thing in her home and her mother feels she is getting worse. She is perfectly quiet so far.

Will you kindly let us know what you can find out about her. Her sister, G., 13 years old, is one of our patients at one of the dispensaries.



A call was made at the home and an interview with the mother brought out the following facts:

Parents born in Germany, no relatives in America. Father, brilliant but very erratic, well-born but not in favor with his family. Had been addicted to the use of alcohol for a great many years. Four years before had deserted his wife and children. Mother, hard-working, plodding, of peasant parents, interested in her children, and anxious to do all she could for them. Mother stated patient had been very bright in school, stood at the head of her classes but was always inclined to be nervous. She left school when in the seventh grade at 14 years of age to go to work in order to help out the family income. At first she did piece work in a factory but it had seemed very hard for her and was given up when a position in an office was found. A few months previous to our worker's visit, a girl in this office had suffered from some eruption on her face and body. Patient worried a great deal about this and began constantly cleaning her desk and the things about her. Finally she had to leave her work and at home was always shaking and cleaning her clothes. She would sit in only one chair in the house which she frequently washed and would not allow any one to handle any of her things. She realized her own nervous condition, felt that she was growing worse and was anxious for treatment. Appeared to be very anemic and was extremely emotional.

An examination by a neurologist was arranged and he suggested sanitarium treatment. The parish priest was interested and the patient was sent for six weeks to a sanitarium for special treatment. At the end of that time she returned greatly improved and upon advice of the neurologist was given work in our occupational department. She was still somewhat emotional but was soon interested in the work. It was discovered that she had considerable artistic talent. This was developed and through the sale of baskets which she made and children's toys which she painted, she was able to earn from \$7.00 to \$9.00 a week. Improvement was gradual and treatment extended over a period of eight or nine months. At the end of that time, however, recovery seemed to be complete and the patient was able to return to her former position in an office where after two years she is still employed giving satisfaction and earning a good wage. In addition to this she is taking certain courses in an art school.

#### BORDERLINE

Referred by Bureau of Occupations where patient had gone frequently to secure employment. She was a woman 50 years of age, born in the United States, had received high school and normal school education and had followed the occupation of practical nurse. She was unmarried and a Protestant. When interviewed she was very nervous and excitable. It was discovered that her eyesight was considerably impaired but she refused to see an oculist. The landlady where she had lived for some time had found her very difficult and peculiar. She was in arrears some thirty or forty dollars for room rent but the landlady stated she was strictly honest and that if she secured employment would pay her debts but that she had been idle many months. She would not do nursing in a family where there was any house work and would not even take care of her own room.

It was the landlady's opinion that the patient was incapable and inefficient. It was found that she was making an effort to bring suit against an employment bureau for having referred her to a position as a domestic. Work at sealing and stamping envelopes was secured for her but her employers were unable to keep her as she was so extremely difficult. At our request she was examined by a neurologist who stated that she had decided defects and was a social problem but hardly an institutional case. He advised work in our occupational department. As it was extremely doubtful that her earnings would support her an interested relief agency coöperated with us in this experiment so that the patient would have an adequate income during the period. In the work in this department it was found that not only eye-sight but also hearing was defective and that she was utterly unable to adjust herself to any ordinary situation. She would make no attempt to do the work provided and was constantly complaining of work, teachers, other workers and food. She became very indignant when it was suggested that an examination of her eyes might make it possible for her to secure glasses which would make things easier for her. She was unwilling to take any type of work but that of companion to an elderly couple and unable to see that her special defects would make it impossible for her to get on in such a position. It was discovered that she was known to many physicians who all felt that she was not responsible, and finally she had become firmly convinced that her inability to get work was due to persecution. An old friend of her family was interviewed but stated that he was unable to do anything for her and could not put us in touch with anyone who would. He was quite sure her family history was negative. She had been in one of the city hospitals two years previous to this time as the result of an injury, had been very difficult and irritable and had been considered a mild mental case. Her eyes had been examined with diagnosis of cataract but she had indignantly left the hospital when an operation was suggested. Six years before she was in another hospital and in two different convalescent homes. In each instance she was reported erratic and difficult.

After several months of effort to adjust her to conditions some relatives were found living in Chicago but she would have nothing to do with them as she considered them her bitter enemies. Finally a position was found for her in a department store for the holiday season but she remained only one day as they put her in the toy section and she said she knew nothing about toys. Again she made many complaints in regard to the people with whom she worked, stating that she was the victim of a system of persecution in which she included a physician who had recently befriended her and all of the agencies with which she had any dealings as well as her relatives and other individuals. The matter was again taken up with the old friend of her family who still felt unable to do anything. Her physician, after this period of intensive study, felt justified in issuing a certificate stating mental illness and papers were taken out for commitment to the psychopathic hospital. When this was reported to the old friend of the family he was inclined to be indignant as he did not feel that she was insane and thought that some other provision should be made. Even the history which had been obtained covering nine years of inability to adjust to any sort of living conditions was not convincing to him. He was told that any arrangement he might make for her care which included the necessary financial aid and supervision would be satis-

factory and arrangements could be made to have her dismissed in the care of any one whom he would designate. At the end of a week the patient was dismissed in the care of a woman who had consented to room and board her, the old friend agreeing to supply the funds. This is probably only a temporary arrangement, but the fact is established that she is physically and mentally unable to be self-supporting and it may be reasonably expected that no further effort will be made in that direction in a community having a well organized confidential exchange.

#### ANGER TO SELF OR COMMUNITY

This case was referred to us by a legal society whose representative stated over the telephone that a patient was in their office much excited, declaring he could not hold a position because wherever he worked his enemies followed him and made his employers discharge him; that recently he had been in the Bridewell, having been sent there through the work of his enemies and no fault of his own. This patient reported at our office and proved to be an Egyptian, 30 years old, who had been in the United States eight years and who had for some years followed the occupation of ship steward or house man. He was able to make himself understood in many languages but unable to read or write, had never attended school and had no relatives in this country. He thought one sister still lived in Paris but had not heard from her for years. All of his other immediate relatives were dead, one brother having been killed in the Boer war. He had been naturalized while living in New York, had held positions in different cities of the United States and had apparently never stayed a great while in any one position but had been more than one year in Illinois. As he was out of a position and needed work, he was employed as janitor in our office while an investigation of his statements was being made. He was found to be a very good worker but inclined to be sullen and easily offended. The fact was brought out that he had been employed in one family in Chicago for six months. Numerous statements which he made in regard to this family were found to be without foundation, and as he was persuaded to talk more freely of his troubles it was discovered that he felt this family, particularly the mistress of the household, was responsible for all of his difficulties, and that he had made up his mind that it would be necessary to take her life if he was to have any more peace of mind.

With these facts established he was examined by a specialist who issued a certificate for his commitment to the psychopathic hospital where he was persuaded to go by one of our field workers. Later he was committed to a state hospital for the insane, where he is now under care and treatment.

#### AFTER CARE

This was a young woman, 37 years of age, born in the United States, who had a high school education. Her history was one of considerable instability during her childhood and early womanhood and she was committed to the state hospital in manic state. Paroled during the first year of hospital residence, she was returned within a few weeks in a highly excited condition and had been in the hospital ten years with no history of any mental abnormality after the first year. She was very agreeable, anxious to be helpful and did excellent needle work. Her relatives

were persuaded to give her a trial outside of the institution when given assurance that they could have the help of a specially trained social worker. She was furnished employment in needle work and later was given training in certain special classes in work for which she seemed to have a liking. At first frequent visits were made to both relatives and patient in order to reassure them. The patient has had no recurrence of her mental difficulty and has been self-supporting for the past six years except during two very severe physical illnesses during which time she was cared for in a general hospital. Both relatives and patient have relied for advice upon the social service worker.

Case work in mental hygiene, then, is of benefit to the individual and, in coöperation with other agencies, to the family and to the community. But it has another and even more far-reaching function—for the records honestly made with proper regard for "the value of evidence" are an important contribution to the research worker in the mental field where so much still remains to be ascertained as to the causes of certain forms of mental disease and methods for prevention.

## THE FATHERLESS FAMILY

BY HELEN GLENN TYSON,

State Supervisor, Mother's Assistance Fund of Pennsylvania.

Before the movement for mothers' pension legislation spread over the United States after 1911, there were two general forms of administering relief to fatherless families. The first was through private agencies, many of which have for more than a decade realized that the only constructive solution of the poverty problem presented by the fatherless family is a regular allowance on which the widow can depend to free her from worry and overwork and enable her to give her children real home care. The other form of administering aid was through the public agency for outdoor relief. Under the old Poor Laws, meager allowances had always been granted to widows, but never on any adequate basis; nor had the public officials administering this relief formulated any policies as to standards of family life to be required in the families aided, nor defined the quality of service to the children that could reasonably be demanded from the mother.

While a few states have developed their mothers' pensions system simply through an extension and re-interpretation of the old outdoor relief laws, the general form of the new public administration of relief has been through the courts. This seemingly chance development was probably due to the fact that in a number of states the courts still have jurisdiction over dependent children and that one of the best-known Juvenile Court judges in the country was the first to make an effort to have the jurisdiction of this court extended over such dependent families. Then, too, there was the greatest distrust and dissatisfaction with the old outdoor relief agencies among those interested in public welfare, and it seemed to be the easiest solution to divorce them entirely from the new administration of this form of aid. The states that have recently passed mothers' pension legislation, however, have realized how unsatisfactory administration of relief through the court is apt to be, and recent mothers' pension laws—notably those of New York, Pennsylvania, Delaware, and New Jersey—have created an en-

tirely new piece of administrative machinery based on the plan of county organization, but with state supervision or control. These efforts to separate this group of dependent families for special treatment reveal a new realization that the community as a whole is largely to blame for the ills that afflict individuals, and a growing conviction that from the point of view of self-interest alone, the state must assume greater responsibility for the welfare of its children. In 1909 the Royal Commission on the Poor Laws of England recommended unanimously that the old poor law machinery be abandoned and a new public assistance authority be created. This year, 1918, in the midst of England's most costly war, this plan has been actually carried out and the new plan comprehends all forms of relief and special provision for dependents and defectives.<sup>1</sup>

Our new Mothers' Assistance legislation, haphazard and unstandardized though these efforts to meet the needs of fatherless families through public action have seemed, has nevertheless these significant effects: definite opportunity is offered to the state to discover the causes of the untimely deaths of the fathers, at the very time of their greatest usefulness to society, industry and the family; also, the chance is given to estimate the cost to the state of preventable deaths of the breadwinner and the loss entailed by the subsequent dependency of the helpless family.<sup>2</sup> With these facts as a basis for further action mothers' pension legislation should soon be taken over as an integral part of the larger and more constructive plan for social insurance.<sup>3</sup> Yet even under such a system of state organization a certain number of young fathers will continue to die untimely deaths, leaving their families unprotected by any form of insurance and in need of organized assistance.

When the average individual hears the term "widow" if he does not think of the fictitious person named to obstruct any economic reform, there instantly flashes into his mind a type picture of the "poor widow" of sentimentalism: a frail, hard-working devoted

<sup>1</sup> Bruno Lasker, "The Death Blow to England's Poor Law," *The Survey*, Feb. 23, 1918, pp. 563-564.

<sup>2</sup> Report of Special Inquiry Relative to Dependent Families in Massachusetts Receiving Mothers' Aid, 1913-17, Senate No. 244, pp. 77-141.

<sup>3</sup> Final section of report on work of Mother's Assistance Fund in Pennsylvania, pamphlet of State Board of Education, in press. See also, Commons, J. R., and Andrews, J. B., "Principles of Labor Legislation," pp. 406-409.

mother, bending over a wash-tub and surrounded by a large group of hungry children. While there are no more innocent and pitiful sufferers from our unorganized social system than the widow and orphan, social workers know that there are as many kinds of widows as there are kinds of women. At one end of the line is the capable mother who will make any sacrifice to keep her children with her and rear them in decency and comfort; at the other, the weak or vicious woman who will exploit, neglect or abandon her children on the slightest pretext.

For the purposes of this paper the family with adequate financial resources is not considered; nor is the one where deterioration in the values of family life (whether due to environmental causes or individual defect) has compelled the breaking up of the family to save the individuals that compose it. The following discussion is limited to those fatherless families, where, with adequate income, the children bid fair to become normal useful citizens under their mother's care.

Whether relief to a fatherless family is administered through a public or a private medium, there are certain prerequisites of assistance which all agencies endeavoring to follow modern methods of social service have established. Investigation should not stop—as all too frequently in the past,—with the proof of the fact and degree of need of the family. A full consideration of the financial resources available in the way of help from relatives, property or money owned by the widow, her own or her children's ability to contribute without harm to the support of the family is of course essential. But the value of the family life measured through a consideration of the mother's mental, moral, and physical fitness to bring up her children must also be determined by investigation. Assistance should not be given in families where the mother is mentally unsound or defective, morally weak, or physically unable to give the children decent home care. Finally, investigation should show the basis of a plan for the future welfare of the family. After the decision to grant assistance is made, the social case treatment of the family should be organized about this plan.

In any family the elements of normal life are disrupted by the death of the breadwinner. His loss is more than the loss of a pay envelope. At this stage of the social and economic development of woman the removal of the father of the family is apt to have a



very serious effect upon the family's solidarity. His loss is felt in the making of plans for the spending of the income effectively as well as in the loss of the income itself. There is great need of his discipline and advice in the training of the children, especially in the case of growing boys. In certain foreign groups particularly, where the status of woman is regarded as so much lower than that of man, it seems almost impossible for a mother no matter how devoted and earnest, to control and guide her restless, adolescent son. Often, too, the father has been the one to attend to such business details as the payment of rent and insurance dues, the one to arrange for necessary medical care for the children. The father also gives the family a certain social and economic status in the community through his relation to labor organizations, employers, and politicians. His advice at the time the children begin to enter industry and to choose occupations for themselves is usually sorely needed. To supply all these weaknesses in the family life is the task of the social worker who administers relief to the family and supervises their welfare.

In many ways the fatherless family offers the ideal group for a demonstration of the value of social case treatment provided that the assistance given is adequately and wisely planned. The Home Service of the Red Cross bases its strong claim to serve the families of soldiers and sailors on similar grounds.<sup>4</sup> A growing family of normal children offers every opportunity for constructive study and guidance. The mother is free from the strain of child bearing and as the children grow older can give more attention to the development of family life. The fact that the income is adequate and steady and not open to fluctuations due to unemployment, illness of the breadwinner, or personal weaknesses on his part such as drunkenness and brutality, enables the mother to gain habits of foresight and thrift that she has perhaps never been able to develop before. A study of the social records of families adequately assisted and well supervised shows that in many cases a rise in the standard of living of the family has actually been achieved. Certainly there can be no more satisfying result in social case treatment than the "graduation" of a widow's family into complete independence, with fuller social contacts, good educational grounding, and a well-rounded family life.

After investigation has established the fact and degree of need

<sup>4</sup> A. R. C. 201 "Manual of Home Service." Second edition, pp. 13-46.

of the family, discovered all available and legitimate resources to meet that need, and found that the mother is mentally, morally, and physically fit to perform her normal duties to her children, the first step in the plan for future supervision is the consideration of a sound financial basis on which the family should be maintained. Unfortunately it is still true that most fatherless families do not come to the attention of any social agencies, public or private, until some time after the death of the man. This period is almost sure to be one of family deterioration. The strain of the father's illness and death, the pressing need of the necessities of life, the demands on the mother's time and strength from her effort to support the family and maintain the home all tend to involve her in difficulties that she could not surmount alone. Through the widow's short sightedness or total ignorance of the world of business, the insurance money slips in a few weeks through her fingers. Dozens of instances can be described by social workers where a designing "friend" of the husband has taken advantage of the widow's ignorance to appropriate the larger part of the small lump of insurance, or where well-meaning neighbors or friends have given her just the kind of advice most certain to deplete her little fund. The usual bad investment of this sort is either the buying of a home under a heavy mortgage in a congested or neglected neighborhood, chosen with no consideration of sanitation, neighborhood conditions, or nearness to work and school; or the expenditure of the few hundred dollars for stock for a little store. In hundreds of such instances the stock has soon been sold; there is of course no capital to replenish it; and finally the little store closes and the family's small reserve fund vanishes with it.

It is surprising to social workers to find how frequently women have not been allowed by their husbands to handle money even for the household needs. Obviously it takes a certain amount of foresight to save ahead for the rent and insurance and even more to realize that furniture or other household necessities bought on the installment plan are not a good investment. Before working out a budget of living expenses for the family, the case worker usually must spend some days in discovering what the family's liabilities are, and in straightening out a tangle of unpaid bills, lapsed insurance policies, and installment charges.

After the existing economic resources of the family are dis-

covered, the next consideration involves deciding which of these are legitimate assets that can be counted on for the future, and which part of the income should be cut off or decreased for the well-being of the family. In many states the law determines the maximum amount of property and money a widow may have and still be eligible for assistance. There is some difference of opinion and legal provision on this question, varying, for example, from the law in Illinois where a mother is disqualified for assistance if she possesses any property and money, to California, where a maximum of five hundred dollars in cash and a thousand dollars in property is allowed. The consensus of opinion seems to be that some equity in property, provided it is the widow's own home, tends to add to the self-respect and thrift of the family and to keep them in the neighborhood and town where they have become established and where all their natural social contacts have been made. The sacrifice of a home to most people brings great discouragement and the feeling of loss of social standing. Then too, many instances prove that it would have been actually cheaper to assist a mother who owns her home, provided the home was suitable to the family's needs and not deteriorating in value, than to insist that she sacrifice it at a forced sale only to become a heavier charge on the community later.

In the matter of money in the bank, since for the sake of economy in the distribution of available funds the amount of the monthly grant must be based on a necessity standard of living, a little surplus is invaluable for meeting emergencies of sickness and accident that constantly arise in a family of young children. This small reserve sum, however, should never be regarded as a source of income to be drained gradually through an inadequate grant; and the understanding with the mother should be that it is only for emergency needs. Yet there is no doubt that its possession adds to her feeling of independence and security from want.

In considering the question of relatives as a source of income the tendency seems to be for public agencies to take a different attitude from that held by private societies. If relief is given by a public agency the attitude of the community usually is that a widow's relatives like other citizens of the state are contributing to her need through taxes and, except where the law holds them legally responsible for her support, that they have a right to claim exemption from that responsibility. There are of course many cases in which rela-

tives, not responsible under the law, have willingly shared with a public agency a part of the economic burden of the family. The insistence of private agencies on the fullest possible aid from relatives is founded on the belief that only through the enforced sense of mutual responsibility can family solidarity be maintained, and that loyalty to one's own kin is a human value which must not be allowed to go to waste. Whether such human values are actually enhanced by insistence on financial help from relatives already struggling to make ends meet is open to question.<sup>6</sup> There is no question, however, that the financial and social status of the relatives should be determined and their help, particularly in other than financial ways, enlisted for the family.

One of the first methods of increasing income to which the needy widow turns is the keeping of men lodgers. Through bitter experience over many years and with a large number of families, social workers are unqualified in their disapproval of this method of adding to the income. Aside from the fact that the presence of any stranger has a disrupting effect upon the family life there are many general considerations that render the policy a bad one. The effect of the men's influence on the growing boys is often bad, the difficulty of making decent sleeping arrangements in a small house, and the actual danger of physical violence to the woman or the little girls in the family must be considered. Quite often companionship and propinquity lead to intimacy; and illegitimate children make the family problems more difficult. Even close supervision cannot ward off these dangers. In the case record of a family which has been under the supervision of one of the best private agencies in the country since 1911 we find the following significant entries:

10/2/11, Widow a particularly sweet, appealing person. Children clever and most attractive. On account of high type of woman it seemed safe to allow her to keep her three boarders. They are a good class of men, interested in the children and helpful with them. When the children need treatment, Nick, one of the boarders, takes them to the hospital.

10/20/13, State Dispensary reports that they suspect pregnancy. This was confirmed later by a private physician.

2/17/14, Henry, 12, removed by Juvenile Court.

5/2/14, Tony, 10, removed by Juvenile Court.

7/7/16, Polney, 10, removed by Juvenile Court.

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<sup>6</sup> See discussion "A Misplaced Burden," *Charities and the Commons*, Oct. 13, 1906, p. 118. See also I. Rubinow, "Social Insurance," pp. 313-315.

According to the other entries in the record this family shows a slow but steady deterioration. If a firm stand on the lodger question had been taken in the beginning, immediately after the husband's death, it is possible that the breakdown might not have occurred.

Another usual source of income for the family and one to be considered most carefully is the mother's own earnings. In judging whether or not a mother receiving assistance should contribute to the family's support, exactly the same considerations should hold that govern any mother's decision about work outside the home. That is, the question of whether she should add at all to the family income and to what extent, should be decided by a study of the age and number of the children, the condition of the mother's health, the provision of care for the children during her absence, and also her own inclination, capacity and past habits. No intelligent plan about the mother's work can be made unless the amount which she adds to the family budget be regarded as of secondary importance to these other determining questions.

Study of the industrial conditions of working mothers has shown that the large majority are employed in unskilled, unstandardized work at the lowest wages and for the longest hours.<sup>6</sup> Office cleaning seems to be the work usually condemned by social workers for the mother of young children on the ground that it is extremely fatiguing and comes at just the time of day, morning and evening, when she is most needed by the children. Of course, a busy mother, who works at night, finds it very difficult to get the proper amount of sleep during the day and at the same time perform her household duties and give her children the proper care. There is also a frequent temptation to the fatigued mother in going through the streets in the cold and dark to take a stimulant or make undesirable acquaintances. The fact that even trained social workers are sometimes strangely blind to the dangers involved in permitting the mother to do this kind of work is shown in the following extracts from the case record of an assisted family:

Mother with 6 children, ranging from 15 months to 9½ years.

6/5/15 M. working at K. & B. Dept. store 4 hours every evening. Receives \$1 a day.

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<sup>6</sup> Katherine Anthony, "West Side Studies: Mothers Who Must Earn." *R. S. F. Survey Associates*, June, 1914, p. 153.

1/18/16, Visitor found a man sitting at the kitchen table in the evening. Said he lodged in the same house and watched the children evenings while the mother worked.

3/29/16, Petition filed in Juvenile Court. Children neglected. Mother illegitimately pregnant.

While other factors than the mother's night work probably contributed to the deterioration of this family it is clear from the entries in the record that it was the chief cause. If it is necessary and desirable that the mother supplement the income, the consensus of opinion seems to be that sewing, fine laundry, or the care of other dependent children are more desirable than the usual forms of work because these occupations do not demand fixed hours of labor, and can be carried on at home while she is attending to her family's needs.

The question of the contribution of working children to the family income is one that can be summarized briefly. In order to increase the family income, no child should be forced into work prematurely, or under conditions that jeopardize its health or future development. It is equally true that a child should not be permitted to contribute more than a reasonable amount of its wages to the support of the family and should not be made to feel that the family is dependent on its earnings to an undue degree.

After the family resources in property and money, financial help from relatives, and ways in which the mother and children may safely add to the family income are considered, the question of the budget on which the family may be expected to maintain a good family standard must be decided. There is no doubt that continuous and adequate relief can be used as a lever to lift family standards of living, and that it is not money aid in itself but the method of administering it that may do harm. One of the arguments against public assistance is that it lacks the elasticity of private relief and cannot easily be adapted to the changing needs of the family. But this is equally true of the weekly wage of the father, and the average family must plan on a fixed sum. The feeling of security which a fixed monthly or weekly allowance gives to a widow enables her to develop those qualities of foresight and thrift by which she may plan ahead for the winter's coal or the next month's rent.

So much scientific and detailed work has been done on budget planning for assisted families that it is unnecessary to describe it here.

The one basic principle, however, is that the amount granted, if expended with reasonable care, must be adequate to ensure maintenance of health, working efficiency, and a good standard of family life.

It is no exaggeration to say that there is hardly a family applying for assistance in which at least one member does not show signs of malnutrition or disease. In the mothers the strain of child bearing, overwork, worry and enforced neglect of the simplest rules of hygiene have often resulted in chronic functional disorders or in conditions requiring surgical care; varicose veins, gynaecological and digestive disorders, flat feet and cardiac trouble are ailments common to these mothers. Among the children, disorders due to neglect and under-nourishment are prevalent and there is great need for the medical treatment of skin diseases, throat conditions, anemia, eye strain, and other disorders that may result in serious retardation in school and later in industrial efficiency. To meet these health needs the aid of private physicians, hospitals, convalescent homes and sanatoriums must be enlisted.

In outlining a plan for supervision for a fatherless family it is well to decide what changes in the family life should be made at once. Even if emergency aid only is given for a few days, it is often wise to withhold regular assistance until a child who has been illegally employed is back in school, the man lodger eliminated, and in some cases until a member of the family in urgent need of medical care is actually under treatment. When regular assistance begins, the mother's hours of work should be changed at once to meet the plan for proper home care of the children. Other changes, such as the improvement in the school records of the children, training the mother in budget keeping, and securing dental care for the family, may require months of regular visiting and patient effort.

In this attempt to ensure the progress and welfare of the family it is perhaps unnecessary to say that the advice and help of clergymen, school teachers, former employers and relatives are needed. Other social agencies can often render the special kind of service that is required to fit some particular need. A housing association may be consulted about a sanitary home in a good neighborhood; a visiting nurse called in if there is sickness in the family; a vocational guidance bureau requested to advise the children as they approach working age; the interest of a settlement or commun-



ity center enlisted to secure recreation and wider social contacts for the family.

The reading of a considerable number of records of assisted families in several cities that had been under the care of either a public or private agency showed that there are still valuable opportunities in supervision that have hardly been touched. In many cases the influence of the personality and ideals of the dead father is a vital factor in the family life, yet only in isolated instances was there any reference to his plans and ambitions for his children. While many records show an attempt to regulate the hours and working conditions of the mother, there were practically no instances where she was offered the opportunity of training for more highly skilled and better paid work. In view of the fact that she is usually quite young and will often be obliged to contribute to her children's support for many years to come, it would seem a wise economy to consider this possibility of increasing her earning power. While the children are often put in the way of obtaining healthful pleasures and forming helpful friendships, the same need in the life of the mother is not considered. In one agency a special effort was made to encourage the mothers of assisted families to join mothers' clubs, attend night school, and seek some social connection outside the home. A study of one hundred records of this agency showed that at the time the grant was made eighty-five of the one hundred mothers were highly nervous and depressed. After the families had been supervised and aided for a year only fifteen of the eighty-five had failed to become cheerful and self-controlled. Certainly this remarkable change must have been due to some extent to the social contacts the mothers had made.

Assistance and supervision of fatherless families under existing community organization can only be rendered successfully by trained social workers; but in most communities there is not only no developed social consciousness, but no one who knows the technique of social service. It is clear that a full measure of state supervision and state aid is badly needed in all such communities. A social reform measure, introducing an intricate new mechanism, but left to the isolated local community to administer, is doomed to inefficiency. Payment for adequate investigation and supervision in most communities must be made out of state funds, and be under state control if the work is to be successful.

It has been repeatedly pointed out that the only just way to solve the problem of the widow and orphan is to reduce their number by seeking to keep the wage-earner alive. The really preventive remedy here is social insurance. The insurance principle makes premature deaths expensive and so tends to reduce their number. The insurance method is also effective in making it possible for the wage-earner to provide for his own wife and children in case of his death, without leaving them to be cared for by any relief agency, private or public.

The theory and even the practice of the mothers' pension work are more closely identified with public relief than with the preventive measure of insurance. It provides state grants for dependent families, on proof of destitution, for the purpose of enforcing a measure of state guardianship over the health and education of its wards. As has been shown, emphasis is placed on moral considerations as well as financial need. Where it has been successfully administered it represents a new and fine piece of public machinery, made effective by its use of the approved methods of private agencies. With the thorough-going social reform that is likely to follow the war, and which is in fact already under way in England, our antiquated poor laws will be done away with. The unemployed, the old, the sick, the invalid, and the widow and orphan as well, may soon be cared for democratically by social, or contributory, insurance. Yet even under such an advanced social organization there will still be a residuum of individuals and families requiring social case treatment. It is to be hoped that out of America's significant new experiment in public charity—the mother's assistance work—may ultimately come a superior piece of public relief machinery replacing the old and discarded outdoor relief, and embodying all the principles of case diagnosis and treatment that have been worked out so carefully by the private agencies in the past.

## DESERTION AND NON-SUPPORT IN FAMILY CASE WORK

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### LEGALISTIC CONCEPTION OF DESERTION

An examination of the existing literature on family desertion brings to light surprisingly little regarding the problems it presents to the social case worker. There have been several statistical studies of its occurrence, and innumerable discussions of its treatment from the legal side, but the case worker in search of technical advice and direction browses over a wide field with comparatively small result. This is probably due to the fact that the rise of the domestic relations courts in late years has tended to turn the thoughts of those interested in the problem toward the legal and judicial remedies which are being developed. It may further be due to the fact that workers in the field of adult probation, who constitute the specialized group of case workers most directly interested in family desertion, are still breaking new ground and have not as yet been able to make the contribution to the literature of the case work movement that we may confidently expect to have from them in the course of the next few years.

Whatever the cause or causes, it seems true that desertion is generally written about as a breach of the law, to be dealt with through the correctional agencies of the community. This is not so much an erroneous as a distorted view of the problem. It fails to take into account the loss and wastage in human life, and emphasizes rather the financial burden of dependency which is laid upon society. Both elements of course exist, and must be recognized no less by lawyers and judges than by social workers in any effective program for the treatment and prevention of desertion.

It may as well be admitted that the hopes which social workers entertained at the beginning of the domestic relations courts movement have not been in all respects realized. What the social worker hoped for was an institution which would administer justice based upon the principles of social case work; but while much has been gained, we still fall far short of this. The law still insists upon

regarding the important element in family desertion to be the deserter's evasion of his financial responsibility and the rendering of his family a public charge. That there can be degrees of culpability in the deserter, aside from the financial question, is not always apparent to the legal mind. The chairman of a case committee, a lawyer, and one of the most large-hearted and compassionate of men, maintained that the graver fault of a young deserter who had left his wife and two infants penniless in a strange city, while he went on a three-weeks pleasure trip, lay in the fact that he had embezzled fifty dollars from his employer to finance the excursion!

There is still much confusion as to the location and extradition of deserters, and in most cities the burden of finding the missing husband and serving the summons upon him is still unrelentingly placed upon the shoulders of the wife. Extradition from without the state is made difficult by lack of appropriations, and by the indifference of district attorneys who feel that no good end is served by bringing a man back on a felony charge to serve a prison sentence, on the ground that "he will be of no more use to his family here than there." A study made by Mr. William H. Baldwin of prison terms served by returned deserters indicates that these are not usually long enough to act as a real deterrent. Indeed, so involved is the question of extradition, that one sympathizes with the bewilderment of the social worker in New York, who said: "As far as I can see, if a man deserts and goes across the ferry to Jersey City he is guilty of a felony, but if he gets as far as Buffalo he is only a disorderly person!" Another anomaly is that contained in the proposition that the wife can claim abandonment only on behalf of her children. A man living with his wife and five-year-old boy in an eastern city, eloped with another woman to a city in the middle west. The couple kidnapped the boy and took him with them, and the distracted mother, bereft of both husband and child, had no recourse in any court, since the father was continuing to provide for his son.

These are instances, however, of shortcomings in the law rather than in the technique of dealing with desertion by correctional means. Under the latter heading, unsatisfactory results are most often to be ascribed to the reliance which some of the courts still place upon the contrasted statements of the husband and wife, supported it may be by the testimony of their respective friends. To the legal mind it may seem an heretical statement, but the social

worker is convinced that testimony concerning family desertion which is drawn out in court, and unsupported by any careful social investigation by a trained worker, is often worse than useless. The causes of this particular form of family breakdown are often too obscure to be apparent to the persons immediately concerned, even if both are honestly trying to give a straight account, and if one or both are not making such effort, the advantage goes to the side that can put up the better story. When a sufficient number of well-trained probation officers are attached to the court to make the necessary preliminary investigations, this danger does not exist; otherwise it is always present. There is something about the factors involved in desertion cases, that seems naturally to arouse the prejudices of the individual who deals with them. Women social workers are notoriously prone to take the part of the woman without giving the man a hearing in cases of marital difficulty; employers are equally likely to feel that there is much to be said on the man's side, especially if they have never seen the wife. The only way in which this perfectly human tendency can be corrected, is either to make or have made for one a careful, skilful and painstaking inquiry into the real facts of the case, obtained from as many well-informed and disinterested sources as possible. In other words, until the courts which deal with social problems like desertion and non-support will consent to abandon their traditional dislike for "hearsay evidence" presented and gathered by social workers, they will fall short of administering the highest quality of social justice.

#### SOCIAL CONCEPTION OF DESERTION

The effect of centering the treatment of deserters and their families in the courts has brought about, even in the mind of the social worker, the feeling that they constitute a class by themselves, presenting problems different from those of other families, and calling for an entirely different technique in their handling. Dr. E. W. Eubank, who has recently made a careful survey of the problem in Chicago and other cities of the United States, makes as one of his leading recommendations the suggestion that social agencies dealing with families, attempt, so far as possible, to center the handling of desertion cases in one person or department. There is room for a good deal of difference of opinion on this point, and its advisability may well be questioned for more than one reason. While a certain

facility is gained through having the dealings with the courts, district attorneys, etc., in the hands of one or a few people, the plan necessarily prevents other members of the staff engaged in general case work from the opportunity of handling the whole problem in desertion cases. Furthermore, it only confirms and extends the tendency to regard deserters and their families as a class apart. The experienced case worker knows that desertion is in itself only a symptom of some more deeply seated trouble in the family structure. It constitutes a "presenting symptom" which does, indeed, indicate some one of a few specified forms of treatment at the outset, but which also involves all of the foresight, patience and skill which the social case worker knows how to apply, if any sort of permanent reconstruction is to be accomplished. Behind a man's abandonment of his home and family there is sure to be a wide variety of causes, some external and easily to be recognized; others rooted deeply in the subconscious instincts and aversions of the people concerned. What these individuals are able to tell is often strangely petty and inadequate without the interpretation which applied psychology is able to give. One man stated that what gave him the final impulse to leave home was his wife's filling his bed with ashes. As legal evidence, this would seem ridiculous; to the social worker who had studied the two temperaments closely, it was an interesting and significant detail.

In this way a great number of widely different family problems seem to be superficially alike only because the breakdown has become so acute that the actual physical disruption in family life has begun. The case worker recognizes that while the absence of the man involves certain difficulties in the finding of him and in the possibility of getting information from him, the case problem which he and his family present is not essentially different from what it would have been before his departure if the problem could have been recognized and brought to her attention earlier. She recognizes that the causes of desertion are as numerous and varied as the causes of poverty, if these could be ascertained, and that they are likely to be even more subtle and difficult of appraisal. Many influences from without are impinging on the home and the family at the present time to bring about a slackening in the bonds which hold it together. Considering the unrest and unnatural stresses and strains of urban life, the wonder probably is that desertion has not increased more rapidly than it has.

Keeping in mind all this, the case worker sees desertion as only an acute form of the symptoms of weakened and crumbling family life. She is unwilling to accept the common theory which divides the treatment of desertion into two fields: one, the location, apprehension and punishment of the man through the courts, and the other, the charitable relief of his family during the process. Instead, she holds that the technique of the case treatment of the deserter and his family is no different in essentials from social case treatment in general except perhaps in the one particular of locating the absconder. She does not believe that reconciliations can be brought about by short-cut methods. Most social workers have a deep-seated distrust, not of the principle that a function of the domestic relations courts is to bring about such reconciliations, but rather of the way in which such efforts have been made in connection with many of them. The wholesale attempt to patch the tattered fabric of family life in a series of hurried interviews held in the court room, and without any information about the problem except what can be gained from the two people concerned, can hardly be of permanent value in most cases. It is natural that case workers, keenly aware as they are of the long, slow, and difficult process involved in character-rebuilding, look askance at court-made reconciliations. With the best will in the world the people who attempt this delicate service very often have neither the time nor the facts about the particular case in question to give the skilful personal service necessary to reconstruction. As a result many weak-willed wrong-doers are encouraged to take a pledge of good conduct which they will not, or cannot, keep; and other individuals who feel themselves deeply wronged go away with an additional sense of those wrongs having been underestimated and of having received no redress. The results are written in discouragement and in repeated failures to live in harmony, each of which makes a permanent solution more and more difficult. The case worker to whom the results of the externally imposed reconciliation come back again and again has reason to be confirmed in her distrust of short-cut methods. In order to demonstrate which contention is right there is great need for a careful study, made one or two years after the reconciliation has taken place, of a large group of couples, the solution of whose troubles has been attempted in this way. Unless there should be supervision for a considerable period by a



skilful and resourceful probation officer all experience points to the conclusion that the percentage of permanent reconciliations would be low.

#### SOCIAL CASE TREATMENT OF DESERTION

While it is true that the deserter and his family present no unique problem to the case worker, it is nevertheless true that certain adaptations in case work technique are usually advisable and that certain points must be especially kept in mind in the course of the investigation.<sup>1</sup> Disparity of age, of race or nationality and of religion are significant factors when they are found in connection with this form of family breakdown. Not less important is a conception of differences which may exist between the couple in the matter of education, habits, social status and moral and ethical concepts. A history of the background of the man and the woman from childhood on, keeping all these factors in mind, is essential to an understanding of the problem. One extremely important fact to have in mind, and one which should be proved or disproved where possible in connection with every desertion case by means of records of vital statistics, is whether or not the marriage was a forced one. There can be little doubt from the experience of case workers that people who contract this type of marriage later find their way in large numbers to the courts of domestic relations. A piece of research quite as desirable as the investigation of quick reconciliations recommended above, would be a study of the married life from the point of view of the community of several hundred families in which a forced marriage had been brought about through the urging of relatives, the church, the court, or those social workers, now diminishing in numbers, who still believe that to legitimize the child and to "give the girl a name" are desiderata sufficiently important to justify forcing together against their inclination the prospective parents of more children.

In the treatment of desertion and similar problems the sex factor is, of course, an extremely important one. The tendency of most social workers is either to ignore this as largely as possible or to theorize about it to such an extent that it serves, as with the Freudians, for an explanation for every phase of human behavior.

<sup>1</sup> See questionnaire on The Deserted Family, "Social Diagnosis," by M. E. Richmond, p. 395.

It is on the whole safer to embrace the first alternative than the second, but the best work in the handling of desertion cases will be done by the person who neither shuts his eyes to this phase of the matter nor unduly emphasizes it. The majority of social case workers are unmarried women under forty, and in this particular respect they frequently find themselves handicapped by the natural reluctance of the deserter to discuss his conception of the marital relation in such a way as to be enlightening to them, as well as by the chivalrous attitude which the married woman of the tenements often adopts toward her unmarried visitor. The decisive statement "You have never been married so you cannot understand" often proves at least a temporary barrier in dealing with deserted wives just as the similar statement "You have never been a mother so you cannot know the feelings of one" is used to block her efforts in another direction. If it is found impossible to carry on the necessary discussions rationally and without too serious embarrassment, it is often possible to call upon the socially-minded physician or clergyman for help along this line.

This, of course, presupposes that the man in the case has been located and can be interviewed; but the fact that in the majority of cases of desertion this cannot be attained without great difficulty is in itself the most serious handicap which the case worker meets in the treatment of desertion. In the location of absconding husbands undoubtedly the greatest single contribution has been that made by the National Desertion Bureau, a private organization which specializes in the location of deserters of the Jewish faith. Its use of widespread newspaper publicity, including the publishing of photographs of missing men, has been widely imitated by other social agencies. In locating absconding husbands it is more than usually important to learn accurately facts concerning their trade connections, membership in social organizations, employment records, etc. Foreign language newspapers are usually willing to print personal inquiries, or even photographs, and trade journals have been successfully employed in the location of even non-union men connected with the trades. The Post Office Department, if convinced that the public welfare demands it, might be induced to entrust reputable social agencies with forwarding addresses. If the husband has deserted for financial reasons, or has left home as the result of a quarrel, his location is a much easier matter than if there

is reason to believe he has absconded with another woman. Although the clues are in this instance doubled since two persons are involved, the pains taken to elude detection are usually greater.

Under ideal police conditions all this ground work of tracing deserters could be done by detectives, who already secure from the post office and all the other sources mentioned, information that furnishes clues. After the man is located through coöperation between the detective bureau and the case worker in charge the man can be interviewed by her or her correspondent.

In the attempt of social workers to locate missing husbands they are somewhat at a disadvantage. The general tendency to believe that the man is invariably in the wrong, and the policy of arresting him first and perhaps letting him explain afterwards, make even a man who has a good deal of excuse to offer for his course, reluctant to permit himself to be communicated with. Case workers are now beginning seriously to question whether in the long run the best policy is not after all to interview the man, or to have him interviewed and to give him an opportunity to state his side of the case before causing a warrant for his arrest to be taken out. The attempt to do this will sometimes result in a second disappearance, but if the man's return can be accomplished voluntarily there is many times the basis upon which to build. The deserter, or at least the first-time deserter, must not be prejudged without a hearing. In spite of the discouraging average of desertion cases, this particular man may not be in the average class, and in that case it would spell injustice both to him and to his family to treat him as though he were.

Some years ago a charity organization society, which maintained a special bureau for the treatment of desertion cases, was asked by a Mrs. Clara Williams to help her find her husband, John, who had left her some years previously and was living with another woman, so that she might force him to contribute to the support of herself and her two children. Mrs. Williams<sup>2</sup> was a motherly appearing person who kept a clean, neat home, and seemed to take excellent care of her children. She was voluble concerning her husband's misdeeds and very bitter toward him, which seemed only natural. The fact of the other household was corroborated from other sources, and Mr. Williams' work references indicated that he had been quar-

<sup>2</sup> These names are fictitious.

relsome and difficult for his employers to get along with, although a competent workman. The problem seemed to the desertion agent a perfectly clear and uncomplicated one and he proceeded to handle it according to the formula. Some very clever detective work followed, in the course of which the man was traced from one suburban city to another, and his present place of employment found in the city where his wife lived, although he lived in another state. The warrant was served upon the man as he stepped from the train on his way to work, and he appeared in domestic relations court. He did not deny the desertion but made some attempt to bring counter charges against his wife. When questioned about his present mode of living he became silent and refused to testify further. He was placed under bond, which was furnished by the relatives of the woman with whom he was living, to pay his wife \$6.00 a week. No probation was thought necessary and the case was closed, both the court and the charity organization society crediting themselves with a case successfully handled and terminated.

About a year later Mrs. Williams again applied, stating that her husband's bond had lapsed, that his payments had ceased, and that she had no knowledge of his whereabouts. Although her home and children were still immaculate she failed to satisfy the social worker who this time visited her home with the plausible statements which she had made before. The children's health was not good and they seemed unnaturally repressed and unhappy. Ugly reports concerning Mrs. Williams' drinking habits came to the society. The school teacher deplored the effect which the morbid nature of Mrs. Williams was having on her youngest child, a daughter just entering adolescence. The son, a boy a little older, was listless and unsatisfactory at his work, and defiant and secretive toward any attempt to get to know him better. He spent many nights away from home and was evidently not on good terms with his mother. As soon as Mrs. Williams saw that real information was desired she began indulging in fits of rage in which she displayed such an exaggerated ego as to cause some doubts as to her mentality. Baffled at every turn the case worker decided to see the man, if possible, and have a long talk with him to see if through him any clue to the situation might be gained. The first step was to gain the confidence of a former fellow-workman and friend of his who now maintained his own small shop. This was done after several visits, and upon the

social worker's solemn promise "not to have a policeman hidden behind a tree" the deserting husband consented to an evening meeting in his friend's shop. A most illuminating interview followed. Mr. Williams was found to be an intelligent though melancholy and self-centered man. The couple had married somewhat late in life, it being Mrs. Williams' second marriage. She had been strongly influenced by her mother to marry him and had never had any real affection for him. It became very evident from his story that the strongly developed egotism of both the husband and wife had made a real marriage impossible between them, and the visitor became convinced of the genuineness of Mr. Williams' protestations that he endured the constant abuse and ill-treatment of his wife as long as it had been possible to do so. As her drinking habits took more hold upon her and he had realized that the break was coming he had endeavored to place the children in homes, and had once had his wife taken into court where her plausible story and good appearance resulted in the case being dismissed with a reprimand to the husband. He then left home but continued to send her money at intervals, although as he got older he was able to earn less at his trade. Socialism was his religion, and it was his preaching of this doctrine in season and out to his fellow workmen which had earned him the ill-will of his employers. He defended his present mode of living vigorously, putting up a strong argument that it was a real marriage, whereas the other had only been a sham. He spoke in terms of affection of the woman who was giving him the only real home he had ever known, and only wished that the state of public opinion would permit his taking his young daughter into his home. The boy, he realized, had grown entirely away from him and they could never mean anything to each other. It was his habit to make frequent trips back to the region where his family lived in order that he might stand on the corner and watch his children go by. He gave readily much information about his own and his wife's past connections, including the addresses of many of her relatives whose existence she had denied, and he successfully proved that her claims as to his lapsed payments were false by producing the entire series of post office receipts covering his remittances to her and extending down to the very week of the interview.

It is true that this is not a "typical desertion case" such as Miss Brandt describes in her study of deserted women, but is it not

equally true that the handling of this one case problem according to legalistic and juridical formulae meant a real miscarriage of justice and the possible sending to shipwreck of two young lives to follow the old? It is experiences such as these which have confirmed in the case worker a determination to avoid formulae and to treat each case problem, in so far as possible, as something entirely new.

#### DESERTION IN RELATION TO THE COMMUNITY

It must not be denied that there is basis for the contention that just as a community can regulate its own death rate within limits, so it can by repressive measures regulate its desertion rate. The sort of prevention, however, that keeps the would-be deserter in the home which constantly grows less of a home, simply through fear of the consequences if he left it, hardly seems so desirable from the social point of view as that form of prevention which would provide for such homes and families the wise, skilled and sympathetic treatment which is the ideal of social case work. There are no figures to show that either method has been sufficiently brought into play in any one community to bring about any marked change in the number of desertions. Dr. Eubank in preparation for his pamphlet, circularized charity organization societies in a number of cities and got widely different opinions as to whether desertion was on the decrease, was stationary, or was on the increase. These were merely opinions and not the result of statistical studies. In New York City, Dr. Devine made a study of five thousand cases known to the Charity Organization Society in the years 1906 to 1908 and of this number exactly 10 per cent were deserted wives. Ten years later, in 1916, a somewhat similar study was made of three thousand families known to the same society in the course of that year. The percentage of deserted wives was found to be almost the same, namely 9.9 per cent. The statistics of the New York Charity Organization Society for the last year show 492 deserted wives out of 4,204, or about 11.7 per cent. This nearly stationary percentage over the eleven-year period is probably only a coincidence as these particular ten years have seen marked population changes as well as the establishment in the city of a Domestic Relations Court, the Bureau of Domestic Relations and the National Desertion Bureau. It may, however, be taken to indicate that the type of desertion which leads to dependency is not markedly on the increase.

Echoes which have reached us already from Europe point to great and sweeping changes in the conceptions of family life which are likely to result from the great war. Inevitably our own standards must be affected since we are learning that not only in a political sense is it true that the lives of all the nations are one. Home Service workers are recognizing that no small part of their task is to help keep strong and firm the bonds which bind the soldier on another continent to his family on this. Perhaps never before has there been the need for careful study and alert watchfulness on the part of the social workers in this country, so that the changes which come are not unanticipated. No one group in the community, surely, is in better position to bear testimony as to the strength and weakness of family life, the changing conceptions regarding it, and the strains and stresses from which it may still be protected.



## THE ILLEGITIMATE FAMILY

BY AMEY EATON WATSON,

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In the following discussion, the phrase "the illegitimate family" is used deliberately. Hitherto our attention has been very largely confined to the illegitimate child and its mother and we have ignored the fact that there is in every case a *family* involved, father, mother and child or children, and that they must all be considered before any adequate plan can be made *with* them. True as it is that in the eyes of the state no family has been formed, yet it is equally true that biologically the child has a father as well as a mother and it is being realized more and more clearly that socially too the child has a father with definite responsibilities and privileges.

This point of view goes hand in hand with the scientific attitude toward the illegitimate mother which instead of destructively condemning or scorning any woman who has brought a child into the world without the legal sanction of her group, rather seeks to understand the underlying causes of heredity and environment which have brought her (and likewise the father of her child) to the illegal conduct in question. Illegitimacy is the result of biological, psychological and social causes following definite scientific laws and there is a responsibility of the community as well as of the individual for its occurrence. So firmly has this point of view become fixed in our thinking since Leffingwell's consideration of it in 1892 that there would be no value in emphasizing it here, did we not find the old point of view lurking in the otherwise excellent "Questionnaire Regarding an Unmarried Mother," by Mrs. Ada Eliot Sheffield.<sup>1</sup> Here the term "her shame" would seem to indicate on the part of even our most advanced thinkers in this field an occasional lapse to the less scientific and more inhuman attitude of condemnation and reproach. "Moral indignation," says Mr. Britling, "is the mother of most of the cruelty in the world," and J. Prentice Murphy voiced this thought at the National Conference of Social Work in Pittsburgh when he said "Much of what we have done and are doing

<sup>1</sup> M. E. Richmond, "Social Diagnosis," p. 414.

for the unmarried mother in contrast with other mothers is steeped and saturated in a superheated, emotional, pseudo-moral atmosphere and I submit to you the observation that no such atmosphere can really make for helpfulness." <sup>2</sup>

While this point of view has taken a firm hold of our thinking, it is only just being applied to our case work with the illegitimate family, which is still decidedly in the experimental stage. Case work with the illegitimate family is seeking to work out principles whereby the interests of the illegitimate child and those of both its father and mother may be harmonized with the best interests of society. This end will be secured when the responsibility for the illegitimate child is more evenly shared by the father and mother as well as by the state. The Castberg law of Norway is being watched with great interest by social case workers as probably the most advanced experimentation in this field, inasmuch as it gives to the illegitimate child among other things the right of paternal inheritance, of paternal name and of the standard of life of that parent which is better situated. The Minnesota Children's Code is also advanced in that it makes the state the ultimate guardian of all its disadvantaged children, including the illegitimate, and therefore it is the work of the State Board of Control to institute proceedings to establish paternity or to see that such proceedings are instituted, as well as to seek in other ways to secure for the illegitimate child the nearest possible approximation to the care, support and education that he would be entitled to if born of lawful marriage. Further and better standards of case work in this field must be established by studying experimentally the question of removing the evil effects of the stigma in illegitimacy. Only injustice is done in allowing this to attach to an innocent child and we must get evidence to show us when the welfare of society is furthered by having a stigma placed on one or both parents. Above all, in line with the findings of modern criminology, emphasis must be placed upon the reëducation of the individuals involved, not upon either punishment or stigma.

#### INFORMATION NEEDED

In gaining the necessary information for a diagnosis in working with any illegitimate family, the case worker, utilizing the same sources of information as worked out for all forms of social diagnosis

<sup>2</sup> From an unpublished paper.

must exercise the greatest tact and consideration. She must make unusual efforts to gain the friendship and confidence of the mother; on account of public opinion, the client has undoubtedly been put on her guard, feeling that everyone is against her. Sympathy and understanding are needed to win her and for these reasons it follows that investigation must be gradual. In some cases it will be necessary to find out the most intimate facts of any individual's life, facts which it is often not necessary to inquire into in any other kind of case work. This is all the more reason for going slowly and carefully with deep consideration and with a realization that harm may be done if the client feels that she is being probed or that she is being forced to reveal information which may be used against her or against the father of her child. It must also be realized that many girls may become morbid and an effort must be made to keep their minds off their experiences rather than to allow them to dwell on them. It is vital that our investigation should be thorough, tapping every resource. Failure to learn all possible facts at the proper moment has undone years of effort. The writer calls to mind a case which had been handled by a relief agency with high standards over a period of seven years during all of which time it was taken for granted that the man and woman were legally married and it was only at the end of this time when an illegitimate child was born to the daughter of the family by her supposed step-father that it was discovered that he was not her step-father and had never been married to her mother. Had this been known earlier, precautions could have been taken to protect this girl and this case of illegitimacy might have been prevented. It is particularly important that in all case work marriage and birth records should be consulted among the first sources of information; they involve the telling of no secrets, are entirely trustworthy and should never be neglected.

It is hoped the following outline for a minimum investigation may be suggestive:<sup>1</sup>

<sup>1</sup> The Boston Conference on Illegitimacy has also worked out a minimum investigation which may be obtained from the President, Miss Mary Byers Smith, Andover, Mass. An outline for a maximum investigation has been worked out by the Inter-City Committee of the Boston Conference. See also Questionnaire by Mrs. Ada Eliot Sheffield in "Social Diagnosis" by M. E. Richmond, p. 414, referred to above.

## I. The Girl or Woman

## 1. Her family

## a. Heredity and health of family

## b. Social history of family

## (1) Occupations

## (2) Earnings

## (3) Marital history

## (4) Type of family life, including size of family, education of both parents, religion, etc.

## (5) Boarders, lodgers, etc.

## (6) Relatives other than immediate family

## 2. Her general history

## a. Date of birth

## b. Place of birth

## c. Race

## d. Residence

## e. Civil condition

## f. Marital history and composition of family, if any

## 3. Her health

## a. Past history

## b. Present condition

## (1) Doctor's examination

## (2) Wasserman or other test if advised

## 4. Education and mentality

## a. Length of time in school

## b. Age, grade and reason for leaving

## c. Vocational or other training

## d. Mental examination

## 5. Occupational history

## a. Occupations and how long held

## b. Earnings in each

## c. Capability as learned from teachers, employers and others

## 6. Recreation

## a. Kinds and extent

## b. How supervised

## 7. Religion

## a. Church connections, their extent, duration and influence

## 8. Sex life

## a. Was her adolescence normal?

## b. Was she ever given instruction in matters of sex and if so, by whom and when?

## c. What has been her sex experience, including her relations with the father of her child?

## 9. Other facts

- a. Age at leaving home, reasons and conditions under which she has since lived
- b. Court record
- c. Institutional record
- d. Known to other agencies

## 10. Relations to child

- a. Ability to care for child
- b. Desire to care for child

## II. The man

All of the above facts, with special emphasis on marital history, composition of family if any, and economic capacity

## III. The Child

- 1. Date of birth
- 2. Place of birth
- 3. Physical condition
  - a. Doctor's examination
- 4. Dispositions
- 5. Mentality as soon as child is old enough for this to be ascertained

In making our inferences from the facts which have been learned by the investigation, great precautions must be taken. In the field of sex there is much prejudice and likewise much that is pathological. We must utilize the help of experts wherever possible.<sup>4</sup>

"And a little child shall lead them." In our work with the illegitimate family, our strongest ally is the child. How frequent it is in the experience of every social worker that while during the pregnancy of an illegitimate mother, everyone turns against her, when the child comes, it makes an irresistible appeal and wins its own way into the hearts of those who should care for and protect it. Therefore our first effort should be to give the child every opportunity to be seen and loved and cherished, first by its mother, then by its father and lastly by its other relatives.

## REMOVING THE CHILD'S HANDICAP

After all it is the child that is our real interest and it is his or her welfare that we are most vitally interested in securing. We have emphasized above that the illegitimate family is a unit and as social workers we consider all the members together. This does not

<sup>4</sup>See Chapters IV and V of "Social Diagnosis" by M. E. Richmond; also William Healy, "Mental Conflicts and Misconduct."

vitiates the fact that the welfare of the child is supreme and that we work for the welfare of the father and mother largely in order that we may do our utmost for the child. This plastic little creature full of possibilities, must have its future safeguarded; we must seek to give him or her the best possible nurture and support, as nearly as possible as if he had been born in wedlock. It is our privilege and our problem to see how we can conquer social conditions so that he will be handicapped as little as is humanly possible. How shall we accomplish this result?

We must take into account the character and potentialities of both parents, arousing them if possible to make a plan of their own. We must meet them on their own level, working with them in order that they may understand their own problems and develop their own resources and character to meet their situation. It has been pointed out that we must remember that the father as well as the mother may be in vital need of our help, that he too may be passing through a moral and spiritual crisis needing friendship and guidance. Above all we should not make a plan for our clients and seek to force it upon them regardless of their coöperation. Such work is pedagogically unsound in that it fails to arouse the individuals to self-help and independence.

Having eliminated the idea of punishment, we shall try to arouse in both parents a love for and a responsibility for the child. We shall help the mother to get away from a sense of shame and arouse pride and joy in the life of the child; we shall try to inspire or liberate the father's protective instinct toward his child, arousing any paternal feelings that he may have. We shall reconcile out of court whenever possible, first considering marriage (if both the man and woman are unmarried). This however must never be forced. When in such cases there is genuine affection or respect between both parents or when in both a real affection for or interest in the child appears, then marriage may be the best solution if both parents so decide. If marriage is not the best solution, then seek to arrange voluntary agreements, legally sound but out of court, thus doing away with the undesirable publicity which has to occur even in our best courts. Such voluntary agreements out of court should not be accepted if the amount agreed upon is much less than it would be if the case were won in court.

As a last resort the majority of cases should be taken to court.

the paternity of the child established and a court order placed upon the man. It is remarkable in how many cases the self-respect of a girl is increased when the paternity of her child is established. This must be done also because every illegitimate child has a right to know who its father is. Are we not in this country beginning to feel that the Norwegian ideal of securing support in every case is practicable and desirable or at least that it should be secured far more generally than it now is? This means that better court methods and more humane ways of dealing with the mother will have to be devised and also better machinery for enforcing the orders which many of our courts are placing upon many fathers of illegitimate children. The amount of these court orders will inevitably be increased, especially in the case of any men who are economically well off and in such cases the period over which such orders shall be paid will undoubtedly continue to increase. In all of these court orders we must differentiate between the just claim of society for the economic support of the child by its father and the questionable claim of the mother for damage done her or the equally questionable claim of society for punishment of the individual man for violating its moral code. Economic support from the man (as well as from the woman) is to be enforced, for failure to support any child is a crime which the state cannot tolerate for its own well-being.

#### INDIVIDUALIZATION OF TREATMENT

So far in our discussion of treatment, we have failed to stress a principle of case work which is as vital in work with the illegitimate family as it is with the legitimate. This principle is individualization of treatment. The day is past when all illegitimate mothers were sent to a rescue home as they were considered to need moral reformation to atone for the sin they had committed. It is still true, however, "that there are few tasks requiring more individualization and there are few in which there has been so little." <sup>1</sup> Individual differences are the basis of social life. So complex is human nature, so varying are the threads that combine to make up an individual life that in no two cases will our diagnosis be the same and in no two cases will our treatment be identical. One test of good case work with this group as with any other is the ability to be flexible, to adjust ourselves to the changing needs of the individuals whom we

<sup>1</sup> M. E. Richmond, "Social Diagnosis," p. 413.



are to help. This being so, we must hesitate to lump any of these groups into classes or a series of classes. The affixing of a label may apparently simplify our work, and we yearn for simplification in a field so fraught with difficulties. We therefore question the classification Mr. Carstens made in his discussion at the National Conference at Pittsburgh when he divided illegitimate mothers into three classes, the good, the vicious and the defective. It is true of course that those illegitimate mothers who are diagnosed as feeble-minded by a psychologist do constitute a group by themselves. This, however, is the only group that can be scientifically measured off, and even within this group we must to a certain extent apply the principle of individualization of treatment. In the main the dangers of classification more than offset the advantages.

From the first, it is vital that the health of the mother and baby be protected. The infant mortality of illegitimate babies is three times that of legitimate. For this reason we must encourage the illegitimate mother to seek medical advice as soon as possible after conception and to continue it regularly during pregnancy and after the birth of her child. For this reason as well as for others some social agency should continue care of both mother and baby as long as possible. Under the Minnesota Children's Code, the State Board of Control may offer to the unmarried woman about to become a mother its aid and protection even before the birth of her child and it is further provided that where a woman is received in a hospital expecting the maternity of an illegitimate child, the person in control shall at once notify the State Board of Control. In other places where there is no such provision, it is disputed whether one central agency should handle all the cases of this kind or whether those agencies that naturally first come into contact with them should continue their care. Some hospitals are doing unusual work with this type of case, e.g., the Social Service Department of the Massachusetts General Hospital which works with the mother a long time before the birth of the child, endeavoring to instill in her an interest in keeping the child when it is born, preparing her mind and her mode of life.

It seems vital in the majority of cases to keep the mother and child together at least for the first six months of the child's life, when the mother should be helped to nurse the baby. Nursing a child successfully, however, is so largely a psychological matter that it is

not enough merely to keep mother and child together but we must so place the mother that she may have the maximum of content as well as of physical well-being. One questions whether a mother can be forced to nurse her child. Should we not rather bring her to see it as a joy and a privilege in order to safeguard her baby's life? The problem of supplying work for her at this time is a difficult one. In some cases it is possible for the mother to act as wet-nurse to other children and thus to support herself and her child. Some maternity hospitals are keeping the mother in the hospital long enough to train her in some form of employment and to assist her in securing the same, allowing her to live in the hospital and to keep her child there while she begins her work.

#### PERMANENT WORK FOR THE MOTHER

The problem of the best regular work for the mother after the nursing period is a pressing one. In the past, domestic service has been the usual solution. Domestic service, however, supplies more illegitimate mothers than any other occupation. Is this not because domestic service is the most unstandardized of all types of work? Its hours of work are excessive, there is little opportunity for recreation or normal companionship and it is an occupation that is considered menial by the average person of intelligence, with the consequence that the most unskilled workers enter this field. If domestic service seems the occupation fitted to a given individual's tastes and abilities, should we not seek to give them training first in this field and then to find them opportunities to work with employers who will understand their need of a sane, wholesome life, including standardized hours, recreation and companionship? The problem of recreation and social life for the domestic employe is one which intelligent women must solve. Until we can find more socially minded employers, should we not hesitate to place illegitimate mothers at domestic service but rather seek to find other types of employment fitted to the individual's capacity and training? How the mother is to do various types of work and still keep her child is a problem.

The ideal solution is where the mother can live in her own parental home, doing part time work in the home or going out to work while some member of her own family looks after her child. If this is not possible, it is sometimes feasible to find a boarding home where the

mother may live with her child, going out to work by the day and leaving her child in the care of the woman with whom she is boarding who may herself be the mother of small children. The more normal such a home life, the better for our client and for the child. Whatever work is found should be interesting, with adequate remuneration and allowing some chance for advancement. Wherever possible an effort should be made to secure funds either from relatives or from scholarships to give the mother vocational training to equip her for a more highly skilled and more interesting type of work.

#### A NORMAL LIFE FOR THE MOTHER

Above all we should aim in treatment to reinstate the mother in normal life, that is, to place her in such a way that in addition to interesting, remunerative work, she will have normal social contacts, companionship with others of her own age, if possible of both sexes under supervision. She needs wholesome recreation supplied to her through clubs, in settlements or church or trade union groups. She needs to feel herself a personality with possibilities of life ahead. And all of the above must be supplied to the child as he grows up. In addition we must seek to make for both mother and child the normal religious contacts, helping the mother to find her place in her church group if she at one time belonged or, if not, opening up this possibility for her in whatever way may best fill her need. For both mother and child strength from this source may do much in helping them to face the extreme difficulties of their lives which we at best can but soften.

If the above conditions can be fulfilled and the mother and child can be kept together, there must be a gain for both. The relation of parent and child when it really exists is basic and is one which should never be broken until every effort has been made to strengthen it and test out its reality. The child needs the family life and ties and the mother needs the child. Yet, as in the case of marriage, we should not force the external living together if it is only the shell of the relationship which is existing. Keep mother and child together, then, if the mother is fitted to give physical, mental, moral and at least part of the financial care to her child and to be happy in doing it. Under such conditions it would seem as if no other plan could so securely safeguard the child's future. If, however, the mother is not fitted to give such care to the child, and cannot be trained for

it while the child is with her, it seems unwise to keep mother and child together. Perhaps a temporary separation may be the solution, in order that the mother may be trained for more adequate parenthood in the future. If she is incapable of being trained under any circumstances, it seems clear that a plan should be made for the child away from its mother, with her relatives if possible, with the father or the father's relatives or in some other situation where it will have as nearly as possible normal home life. In the case of a defective mother the baby should be separated from her just as soon after birth as the physician deems wise.

In cases where there is no relative who can adequately care for the child, we are faced with the question of adoption. In this volume of *The Annals* J. Prentice Murphy has outlined certain questions which must be answered before the legal adoption of any child is arranged for.<sup>6</sup> We must stress the fact that this should never be encouraged until we know all the facts about the child's own parents and relatives and are reasonably sure that they can never offer it a suitable home. The writer has in mind a case where a social service worker made only a cursory examination into a child's home situation before securing its adoption by a wealthy doctor. At the time she thought that the father had deserted and she knew nothing of the possibilities of his returning and the family being restored to normal life. Although it later turned out that the child was illegitimate, it was by no means clear that the child's own relatives could not have cared for it adequately. Untold harm may be done in this way. Another aspect of the matter that should be considered is that of disease and heredity. No child that is of diseased and no child of feeble-minded parents should be placed in any home for adoption until the foster parents know the full facts of the case and are ready to take every precaution to see that the disease is not passed on to others and that later in life the defective germ-plasm is not mated with normal stock, thereby passing on the defect and causing much preventable misery.

#### DEALING WITH THE ILLEGITIMATE FAMILY

Should case work with the illegitimate family be conditioned by exactly the same considerations as case work with the legitimate

<sup>6</sup> See his article in this volume on "The Foster Care of Neglected and Dependent Children."

family? This question has been variously answered: in one way in a paper at the recent National Conference in Pittsburgh, and in various ways by the different conferences on illegitimacy in their more intimate councils. Our answer is that it both should and should not be. In the main "the methods and aims of social work are or should be the same in every type of service."<sup>7</sup> The individuals constituting the illegitimate family do not necessarily differ in any wise in physique, character or ability from those constituting the legitimate family.<sup>8</sup> The principle of individualization of treatment applies equally in our work with both groups. There is, however, one factor which is present in every case of illegitimacy which in the opinion of the writer inevitably affects our case work with this group. That fact is that the man and the woman have both broken the law or the "mores" of the larger social group in which they live. It is true that the laws concerning illegitimacy have varied in a most interesting way as we follow down the pages of history, but failure to conform is a distinct social phenomena which must be studied. Therefore in every case of illegitimacy we have an added consideration to study, i.e., why did both the father and mother break the law and bring a child into the world without the legal sanction of their group? In the widowed group the specific maladjustment which brings the woman to our attention is of a different kind; in the deserted wife group the man and woman have followed the law at least to the extent of legally forming their family and the man has given the woman and child his protection for at least a period. In the illegitimate family the psychological attitude of both the man and the woman will inevitably reflect the fact that they have broken the law and we must understand in just what way this is so.

In the second place, case work with the illegitimate family will be conditioned by different considerations than that with the legitimate family group in that treatment with the illegitimate mother must always bear in mind and depend upon what society's attitude is toward the girl. Public opinion is such a strong force and can punish so severely those whom it condemns that we must reckon

<sup>7</sup> M. E. Richmond, "Social Diagnosis," p. 5.

<sup>8</sup> Undoubtedly a certain percentage of unmarried mothers are feeble-minded but this is also true of married mothers. There are probably more feeble-minded among the illegitimate mothers than among the legitimate but this tells us nothing concerning any individual in either class.

with it, no matter how unjust we may consider its decisions to be. This is well illustrated by the case of Mrs. B, a widow with five children whom a relief agency had been assisting since the death of her husband. When calling on the undertaker to learn the number of her husband's grave, he assaulted her with the result that she became pregnant. From previous experience with this woman and from all that could be learned, she was entirely innocent of any wrong, but the problem that faced the case workers was inevitably very different from that which would have faced them under any other conditions. The coming child had been conceived contrary to the laws of society and public opinion must be reckoned with in our work with this mother, with her child and with its father. The social case worker in this case has a definite responsibility thrust upon her to educate public opinion by her case work to a more just attitude. It may be a great temptation to do the easy thing, to help the mother move to a different locality and to start life afresh, but two conferences which deliberated long and carefully on this case felt that such a plan would be cowardly and that it was a definite responsibility to help the mother through her confinement and to return her to the community in which she lived. Then with economic help from the father of her child, as well as from the social agency, she could show that the mother of an illegitimate child can be worthy of confidence and can in every sense of the term be a good mother to her illegitimate child as well as to her legitimate children.

Social case workers then who are working with the illegitimate family must do much hard and careful thinking. They must have in mind the historical development of the family, must be in touch with the findings of modern criminology and above all, must have courage and sympathy to work with their clients, on the one hand reeducating them and, on the other, reeducating public opinion. The maladjustment which results in the problem of the illegitimate family is part of our evolving standards of family life.

May we not therefore emphasize the need of a higher conception of parenthood and of family life as a means of preventing this very evil? The maladjustment which resulted in the birth of an illegitimate child came partly at least through ignorance or the failure to realize the wonderful responsibility and great possibilities of sex in its finest sense. We must see that the right kind of sex education is given to the illegitimate child in its turn in order that

he may see the full measure of his possibilities. But if our case work is to be truly sound, we cannot stop by applying this only to the illegitimate child but we will do all in our power to supply every child with a sound foundation in health, vocational education, normal social contacts and recreation, and, above all, to give it the vision of what life may mean when every individual man and woman keeps sacred and untouched this creative power of sex until its exercise will bring only joy to the individual and welfare to society.



## THE FOSTER CARE OF NEGLECTED AND DEPENDENT CHILDREN

BY J. PRENTICE MURPHY,  
General Secretary, Boston Children's Aid Society.

More than fifty years of controversy on the part of children's workers as to which offers the better care,—the family or the institution,—would never have taken place if all the parties interested had enjoyed a common understanding of the significance of what the modern social worker calls case work, that elastic, imaginative, penetrating understanding of each individual in need, that process of interpretation that never looks upon the individual as a solitary, isolated being, but as very closely related to many people and things and difficult to understand.

Most of the workers engaged in the children's field of service have for years past developed systems of care and methods of treatment which they felt were indisputably right. One of the interesting developments of a good case work job is the discovery that it becomes increasingly difficult to classify rigidly the children or people you study. One child will be considered by an ineffective social worker as dependent but by a much more skilled worker as representing a variety of conditions other than dependency. There are copious illustrations along this line in society's treatment of adult delinquents. The more we know of the conditions causing crime, the more do we understand that pure delinquency as such is a very rare condition in any individual's life. Just so we discover through case work that pure dependency and pure neglect are equally rare conditions in the lives of children. They may be neglected; they may be in need of foster care; but they are also a series of different entities, some intelligent, some unintelligent, some capable of great growth, others not, some well, some sick, some properly trained, many improperly trained, some in need of a certain special individual touch, others equally in need of a radically different oversight and supervision.

The laboratory method has prevailed less in children's work than in most other fields of social work. There has been little actual

studying of methods and results, little open-mindedness; but on the contrary, often a fierce and violent contentiousness on the part of advocates, irrespective of the system in question, who were convinced that those differing from them were entirely in the wrong.

We are here considering foster care of children who by reason of sickness, death, incompetency, improper guardianship or wilful neglect on the part of their parents or relatives, must be provided for in foster homes. We are not including in this group children whose parents are suffering solely from poverty. Such children do not properly come within the scope of an organization giving foster care, but fall within the field of organizations giving relief in any form or able to advise and otherwise assist in the carrying out of plans which relieve the condition of poverty without giving material relief. We are not eliminating from this neglected and dependent group, children who by reason of the parental treatment they have received present special problems in the way of discipline but who do not fall within the so-called delinquent class.

All of the countries of western Europe, and the United States and Canada have for two generations been engaged in the process of developing certain special methods looking to the best care of children who for any reason must be taken from their own families. The time has arrived, however, for a proper understanding of the only dependable method of approach to the care and treatment of such children. The whole controversy between institutions and agencies engaged in children's work and giving different types of care can be settled only through the application of good case work. Only in this way can there be carved out for each child that type of care which it most needs, and for each institution or agency that task or service which the community where it operates most needs.

The introduction of case work has meant the revolution of medicine and law and is meaning the revolution of social work. Every branch of social work which is touched by case work methods, is in process of revamping its technique, with such results as make the newer type of service a very different thing from the service of even a few years ago. The problems of the destitute, of the sick, of the insane and mentally defective, of the delinquent, of the dependent, are now being expressed in terms of hopefulness and understanding such as were almost entirely absent in the past. This case work approach to work with children has particular significance because

children more than any other members of society will most benefit from it.

The approach to any neglected or dependent child, as to any other individual, adult or child, should be made only in the spirit of understanding his needs, of trying to meet them rather than with a feeling that his needs have already been interpreted; that he has already been classified; and that rigid and inelastic methods of treatment are always proper and wise. With such diverse groups of children, whose needs arise by reason of certain conditions in their own homes, the children's organization must deal, and it must so adjust its work as to be able to provide the special and intimate services, sympathies and understanding, which are the right of every child and without which no child can develop normally.

It is the task of the social worker to know the children with whom he or she is dealing, to see things from their standpoint as much as from the standpoint of the adults and others who have affected the life of the particular child, and then to try to provide through social treatment the essentials which careful study shows the child to have lacked. Therefore, every children's organization which expects to do an effective, helpful service to the children and to the community which it reaches, must be provided with workers who are competent to understand the social problems which the children present, to get their right relationship, and then to apply the most effective social treatment.

This better type of care will in many instances apparently cost more than less thorough work, but actually the best and most complete service to an individual in need, no matter how great the cost, is in the end the least expensive. Moreover, on the cost side, the war has fastened upon many people of all social positions this one great idea; that if so much money can be spent for a special national protective work, then with equal justice may society publicly or privately spend far larger sums than we have thought advisable in the past for the proper care and training of thousands of children who through no fault of their own stand in need of development and opportunities which their parents cannot or will not give to them.

As has been noted, we are not concerned in this paper with the problem of care for children in families where poverty is the chief cause of distress. One general principle should control all work for children, namely, that the child's own family ties with parents or

other relatives, if it is living with the latter, should be broken only as a last resort. Because good case work does not hold with all children's agencies, this principle is not observed; action is often taken in ignorance of the child's real home conditions and resources, and he is injured rather than helped; for foster care, although it may be of the best, is nevertheless, in many instances, a poor substitute for the care which parents could and would have given if the means, opportunities or advice, had been provided. Even applications for temporary care of children should be carefully studied because often the thing asked for is not what is needed and other than temporary care may be necessary and imperative.

The work of the Bureau of Investigation of the Department of Public Charities, New York City, under Commissioner Kingsbury, is proof of how more careful case work means the keeping of many children with their own people. Fewer children were committed by the Department to the children's institutions in New York City during the last years of Mr. Kingsbury's term than were committed during the term of the previous Commissioner, the decrease being the result of a more careful understanding of family problems affecting thousands of children.

#### CASE METHODS APPLIED

Let us apply case methods to the following special problems which concern every social worker and especially every children's worker. Consider the question of adoptions. A study of the reports of certain children's home and children's aid societies and certain institutions scattered all over the country, shows a surprisingly large number of complete adoptions of children for each year of their work. A study of the reports of other organizations, often in the same localities and usually dealing with the same types of children and caring for equally large numbers of children, shows almost no adoptions. Why is this so? Careful study leads one to feel that the difference is due largely to the lack of adequate case treatment on the part of the first class of agencies and to the use of good case methods on the part of the second class.

The case work approach to the adoption problem presents a series of very special difficulties. First, the more one studies intake (that is, the more one studies the applications for care presented by parents, relatives, interested friends, and coöperating agencies,

public and private), the more one finds out that there are relatively few children without some ties of relationship which should be preserved. This holds equally true for the child who is usually adopted and for the child who is given long time free home or boarding care, either in institutions or families.

The great majority of children now given for adoption are illegitimate children. However, a large number are the children of lawfully married people, who for a variety of reasons are willing to give up their children or to permit their children to be taken from them under curiously illegal legal agreements entered into with the caring agency.

The well trained social worker will try to preserve for a dependent or neglected child such ties of relationship as will help it. She will also understand that full knowledge about the child she is helping will inevitably mean better care.

The adoption of a child should mean the answering of at least these questions:

1. Is an injury being done to its parents or relatives in taking it from them or keeping it from them?
2. Are they quite unable, with proper assistance, to train their own child?
3. Are we certain that the adoption proceedings do not represent an escape from proper responsibilities on the part of a parent?
4. Is the child well physically? Is it well mentally?
5. Have we fully satisfied ourselves as to why in each particular instance the relationship, provided the parents are living, is being severed?
6. Are we trying where possible to keep alive the relationship between brothers and sisters, assuming that the child considered for adoption has brothers and sisters?

Our failure as communities to apply case work methods to the adoption problem has meant that courts, communities, governing bodies and social agencies have quite underestimated the significance of their large adoption rates. Social conditions are not right in a community that year by year is agreeing to adoptions of large numbers of children.

Each unmarried mother takes on an entirely new significance if we survey the adoption of her child in the manner suggested. The maternity homes get into a right relationship to their jobs when case work methods are applied. Our failure to apply the case method to illegitimacy has meant our failure up until now to get the real significance of our illegitimacy situation. Only as innumerable stories

are studied and analysed will we get beyond the stage of simply passing out illegitimate babies without knowing exactly why they come and how the tragedies back of each little child may largely be prevented.

Careful case work with unmarried mothers shows a high percentage of capable mothers who, if given the opportunity, have training possibilities which would benefit their babies. Careful case work also shows that many unmarried mothers are feeble-minded or suffering from syphilis or gonorrhea, and frequently that babies of the latter class suffer from syphilis. How necessary does it become to see that babies with this inheritance of feeble-mindedness or disease are not placed in families where the opportunities offered will be wasted upon them.

Our tendency to provide foster care for illegitimate children so easily and so constantly, in ignorance of the conditions from which the child has sprung, is evidence of the fact that legal injustices with reference to illegitimate children and social injustices with reference to mother and child still persist.

When each unmarried mother and her child are studied with a view to their best development, there will be many instances in which it would seem wisest to arrange for the adoption of the child, and these children will then be most accurately placed in families according to their abilities based on physical and mental health. More mothers will receive support from the fathers of their babies, more mothers will be assisted in getting from the experience of unmarried motherhood that protection which will help them and their children and the state. At the present time the failure to apply case work generally to the illegitimacy problem means a ruinous shifting of responsibilities to other parties who do not always continue with them. The best societies for the protection of children from cruelty are constantly removing children from adoptive homes where conditions of neglect hold, the primary reason for the condition of neglect often being due to the fact that some agency or person at the time of adoption did not know the whole story with reference to the child's physical and mental history.

All students of the problem of child care agree that the normal family is the ideal place for the rearing and training of children. This position was emphatically affirmed at the White House Conference in 1909, and has been constantly reaffirmed since then

by children's workers of all interests, including institutions and placing-out societies. The chief difficulty on the part of the leading institution people is their fear that there are not enough good families. An adequate understanding of neglected and dependent children on the basis of good case work, prevents one from saying that either family or institutional care exclusive of the other completely meets our needs. However, the more carefully the children's organization, whether institution or placing-out society, studies its applications in terms of case work, the more constantly does it see that it must continuously base its major services on something approximating family life.

It was case work, although this term was not used, that led to the development of the cottage type of institution; it was case work that drove home the idea that the congregate prison is an evil and a terribly injurious institution; it was case work that showed the courts that community life and family life may be tried with increasing numbers of those charged with delinquencies and with helpful results; it was case work that carried the hospital contacts from bed-side or clinic out into the family and the community; it is case work that is making each progressive children's agency see every child it receives as having a variety of needs which can best be met by family life or its approximation if they are within an institution, and that the desirable thing is to strive to transfer the training task as rapidly as possible to family centers.

Thorough case work, as applied to home-finding or more specifically the securing of foster family homes for children, is of very recent growth. The fact that home-finding methods generally have contained so many elements of chance has made many institution people feel that good institutional care is a much more certain and definite thing to follow. If potential foster homes are studied in exactly the same way that other families known to social agencies are studied, the element of chance is increasingly eliminated and then is there possible that adjusting of particular children to particular families which so many of us have talked about and so seldom realized. If the home-finding job had always been what some of its advocates have said it was, there would be few types of institutional care in existence. The application of case methods to this division of children's work will effect as great a revolution on the home-finding side as on the institutional side.



It is a fact that most families into which neglected and dependent children finally go for care are selected in a pretty superficial way. Even reputable children's agencies which exercise great care in determining the children they will receive are content with much less thorough service in selecting the foster families to which the children are to go. Most well organized cities throughout the country now have confidential exchanges and yet it is rare to find the children's organizations using these exchanges for their foster homes.

A potential foster home should be studied with the utmost care and everyone having important knowledge as to its training ability or disability should be searched out. In too many instances workers are prone to let the question of approval rest on a small fund of information furnished by the family plus a few references which they have given, and occasionally information from independent sources known only to the society. It is no wonder that the most thoughtful students believing in the institutional methods—who see only the work of these agencies—look with questioning on such a procedure.

Family home work for babies is largely a matter of getting expert physical care. Yet an organization paying regard only to the physical factors may by reason of faulty work do great injury to the unmarried mother of a baby in such a home. One society reported the family of a physician who with his wife was able to give most intelligent care to certain babies placed with them, and there were no difficulties offered until the baby of a young unmarried mother was placed in this home. Then the discovery was made that the physician was a man of low morals and had gravely tempted the girl immediately on his learning that she was unmarried.

Where families are being sought for the foster care of babies, it is not necessary to search only for good disciplinarians, or for people of unusual education, but the home life must be good, especially where there are contacts with unmarried mothers. Often the most effective work done is through the foster mother rather than the visitor, who is most directly concerned with the supervision of the mother and baby.

For quite a long while a difference of opinion has existed among the children's workers most interested in the care of children in families, with regard to the value of free homes as against boarding homes. The advocates of the free type of home have contended that they

used a better type of home than was true of the type largely engaged in boarding out. If one approaches the dispute with a view to ascertaining all the facts, or in other words follows the case method, certain things will stand out: first, that free homes are generally restricted to very little children who are without family ties or whose family ties can be severed without opposition from parents or others. These children are supposedly well and must generally be attractive; that is, sick, diseased or unattractive children do not come within this class. Second, older children, generally over twelve, are received into free homes because of certain services they may render.

It therefore becomes evident that a great many children whose family ties cannot be severed, or children who are unattractive and come from poor, low grade homes, who are sick or impaired physically or mentally, must be provided for in other than free homes.

In many states which have developed strong free home agencies, agencies that do almost no boarding out, there has also grown up a number of institutions which under this system have to take over the job of caring for children whom no one is desirous of fitting into families. Moreover, many of the free home organizations have felt strongly that to develop a boarding out service, that is to provide board in families for these children whom they could not place in free homes, would tend to decrease the scope of their free home work.<sup>1</sup>

<sup>1</sup> The situation in Massachusetts has been pointed to as bearing this out. This state has approximately 10,000 children in families under the care of public and private organizations. Of the 10,000 approximately two-thirds are in boarding homes. There is none of the free home development in the state such as holds in other states, but there is likewise none of the institutional development, because the public and private organizations are quick to give family care to a child even if board has to be paid when they are certain that such children cannot secure opportunity for free care.

The situation in New York illustrates the results of a non-boarding out development of the children's field. There has grown up alongside the important free-home children's agencies an increasing institutional population. Part of this institution growth has no doubt been due to the subsidy system, but a large part has been due to the fact that there were no private agencies standing for the boarding out idea. In other words, the case work method, involving elasticity and adjustment to the needs of a particular situation, was not in evidence.

The development of the children's Home Bureau of the New York City Department of Public Charities and the placing of many hundreds of children in families at board during the first year and a half of the Bureau's existence, is striking proof of the wisdom of this addition to the free home equipment in the state and has suggested to some of the best institution people opportunities for growth and a transfer of activities from the institution to the family plan.

It is utterly useless to say that family care is better than institutional care for a particular child, unless we are prepared to give continuing, penetrating supervision. A children's society placing its wards in families and giving inadequate supervision is offering no arguments against institutional care but may be offering many in favor of it.

Good case work in the children's field, among other things involves seeing an accepted responsibility through to its conclusion, yet it is not good case work so to load a visitor with children placed out in families as to make it impossible for her to do more than pay a few fleeting visits in the course of a year. The standards set by a small number of children's organizations of forty to fifty children to a visitor are simply not accepted by children's agencies generally. If the development of opportunities for free home care is checked, the fault is due to the neglect of the workers rather than to the injurious results of the boarding out plan. Almost none of the agencies using either method exclusively have accumulated important history records for the children in their care. This has meant, of course, a lack of accurate and complete data which must preclude any scientific study. It cannot be stated too frequently that this whole question of child care is capable of scientific interpretation and unsupported opinions must give way to statements based on facts.

On the other hand, few institutions have kept records of their work in such shape as to make it possible to study now the results of their services and determine wherein certain types can best be cared for in institutions rather than in families. A careful study of case histories of children in need of temporary care, conducted by both institutions and family agencies, ought to disclose data as to which has brought the more helpful service to the children.

The executive officers of the Massachusetts Trustees for Training Schools, who have in charge the three state industrial schools for children, feel very strongly that whereas probation for a child in the community represents a procedure that should be tried in almost every instance where a juvenile delinquent is involved, yet the dividing line between what a family can do and what a training or industrial school can do for a child is not clearly and definitely understood by very many children's workers. This same indefiniteness holds in the matter of institutional and family care where neglected and dependent children are involved. The doctors and lawyer

are constantly expressing medical and legal problems in terms of cases. (Dr. Richard C. Cabot's "Differential Diagnosis" is an evidence of something that we should have in social work. The problem of the best kind of foster care, whether in families or in institutions, could best be stated and understood if we had monographs giving histories and treatments of given groups of children: children related; children without relatives or brothers or sisters; children with no special problems, others with very special problems of health, impaired minds, or bad habits.

Returning to the matter of adoptions, it would throw great light upon a most important question if certain organizations dealing with neglected adoptive children could study and re-state for the public the histories and treatment of the children involved and give especially the reasons why these children had to be removed a second time often from homes of neglect.

The case method is also admirable for use in weighing the advantages and disadvantages of the community in which an effort is to be made to place children in families as against giving them institutional care. There are many communities in the United States offering less than a proper minimum in the way of social life. The schools are poor, the terms are short, industrial opportunities are nil, housing is bad, the country is sparsely settled,—it is folly for any children's worker to contend that where such conditions prevail proper family life with necessary neighborhood contacts will be found in sufficient quantity always to provide for all the children in need of care.

The tendency of many of the child-placing agencies to sing the praises of the ideal home and then to dodge so far as actual work is concerned the care and adequate training of the more difficult children referred to them, with particularly serious results at the time of adolescence, has thrown upon the institutions a very difficult task. This has particular reference to the giving of care to dependent or neglected older boys and girls. Every well-informed child-placing agency knows that when children of twelve or thirteen or fourteen years are referred for care, the problem of treatment, and the certainty of good results, are very different from the cases of much younger children.

The family agency in receiving a child at this age has a much more difficult if not impossible task in building it into the texture

of a family. Years of neglect make most necessary for the particular child very intensive, special care and not every good home, good from the standpoint of morals, cleanliness, intelligence, etc., is able to provide that accumulation of interests which the adolescent child demands and has to have. The psychology of this particular children's situation has not been shaped up, at least so as to affect the work of children's organizations as a whole.

A certain type of institution, the like of which is rare, might be so effective in giving care to these older children, or children who arrive at a period of dependency at a late age, as to be in advance of the family agencies; but there should be no uncertainty about it and either of the plans can be entered upon with certainty only if the histories and treatment of each child involved are studied and the combined experiences properly interpreted.

The extent to which institutional care is given by the Catholic Church to its children is a cause for constant comment, especially as this holds with reference to little children, because if there is flexibility in methods, these are the very children that are most easy to place in families. The difficulty of getting enough Catholic families into which these children might go has been offered by some as a reason for the institutional emphasis. The experience, however, of the New York Department of Charities in placing large numbers of Catholic children in homes of their own faith and in a district as congested as the area surrounding greater New York would seem in a measure to dispute this contention. It is also important to note the work of the Massachusetts State Board of Charity in placing its wards in homes of their own faith.

In the giving of foster care, whether in institutions or families, there are other special considerations having a particular religious significance. With this constant emphasis on training along certain sectarian lines as laid down by various religious denominations, there is interjected a special difficulty from the placing out standpoint. Good case work, irrespective of any interest in any particular religious creed, will see to it that a child is placed generally in a home of its own religious belief; that is, a Catholic child in a Catholic home, a Protestant child in a Protestant home, a Jewish child in a Jewish home. Now, it frequently happens that a home thought of for a particular child is good on every count except that it is of a different religious belief. Frequently the argument is heard that

placement in this home for the child in question can have no serious effect on the child. It will be allowed to continue its own religious life, and the utmost respect will be paid to its own religious opinions. Holding liberal religious views, the writer of this article feels that such an argument is wrong.

Growing out of experience with a variety of children's problems, one does realize that the statement made above that few children are without ties of relationship which can be severed completely, is indisputably true. The child's early religious training results in the formation of certain interests and possessions which cannot be lightly dropped. Therefore, while a child will benefit physically and in many ways socially by care in a good home of other than its own faith, conflicts are presented to the child which affect it most seriously in its later reunion with family and friends. An element of doubt on a hitherto undebatable subject is injected at a time when the child is often least able to get his proper bearings. This would seem to lead to the plan that familiar religious atmospheres and training must be continued for a child when receiving foster care, involving as it may institutional care. There is the further argument that unless a child is placed in his old religious atmosphere, he will wander from a particular religious denomination and may thus be lost to the membership of a particular church, a spirit of propaganda for which the writer has no sympathy.

Careful follow-up records should be kept by every family or institutional organization of the foster homes in use; that is, after the initial reception investigation with all of its ramifications has been made and a decision to use the home has been reached, then all further contacts with that home should be summarized and entered on the record, so that the home's training and development under the direction of good family visitors, the results of care given to the different children received into the home, and the reasons for success or failure in given instances, should all be there. The records should also show changes in the family structure. In so many instances the children's agencies are prone to forget that the family organization as presented at the time when first used will not last forever, and that a very good home, good because certain members were there, may become a very bad home because certain members have died or left. An illustration of this is the home of a deserted wife whose husband had long been away, and whose children showed

the effects of her good training. Her home was an excellent training place for children who had been deprived of their own parents, but became a very bad place especially for girls when the husband returned and the wife, out of a mistaken sense of responsibility, felt she could not turn him out of doors.

Under such a record system, the visitors would be so accurately and completely informed as to choose the foster homes with greater certainty of success. If a number of children's organizations were to keep such family records, it would then be possible to show under what family conditions the children, with all of their varying personalities, best develop. It would also be possible to show the homes that had been rejected or later disapproved because of the development of conditions which were not evident or were not discoverable at the time of their acceptance. Monographs on such records of experience would help all children's workers and every intelligent social worker dealing with children's problems would have a new value placed on her best work.

The country is in the midst of its greatest social crisis. No children's organization need feel that more careful study will lead to its elimination for if it base all of its work on good case studies the treatment will be of the right sort. Case work with children means knowing them and when intelligent people know them they treat them wisely. Knowledge here is power to do the right thing.



## ESSENTIALS OF CASE TREATMENT WITH DELINQUENT CHILDREN

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So far as case treatment of delinquent children depends upon the authority of courts it is necessarily limited and colored by the provision of the law establishing those courts; by the personality and judicial methods of the judges; and by the public opinion that created and sustains the laws. It is, therefore, a first requisite to continuous good case treatment of juvenile delinquents that there be a right attitude of the public mind, and that this attitude be expressed in laws and court procedure which will permit and encourage good case treatment of the individual delinquent. A brief reference to the public opinion which found legal expression in the Roman law, the penal code of France and the English common law, compared with the American law which in many states gives a juvenile court chancery jurisdiction, will illustrate the necessity of a right attitude of the public mind towards young offenders as a basis for right case treatment.

### THE BASIS OF CASE TREATMENT IN PUBLIC OPINION AND LAW

The Roman criminal law treated the adult differently from the child by making a gradation from non-punishability—seven years, through stages of “impuberes” (for boys till 14, for girls till 12) and “minority” to full maturity at 25 years. The amount of punishment varied according to these gradations in age though not by a definite scale. There was no special judicial procedure or special punitive institutions for juvenile offenders.

The penal code of France similarly distinguished between an adult and a child, placing the dividing line at 16 years. For offenders under 16, the law provided that if a child acted without “discernement” he was to be acquitted and either returned to his parents or sent to a house of correction for a definite time which must end when the offender reached the age of 20 years. If the offender under 16 acted with “discernement” he was to be pun-

ished to a less degree than an adult according to a graduated scale. There was no minimum age for punishability and no special judicial procedure.

The common law of England which has been followed by the statute laws of many American states gave seven years as the lowest limit of punishability. Above this age and below maturity during most of the nineteenth century, England and the United States have graded punishment according to the judicial opinion of the degree of responsibility of the young offender for his offense. Of this groping of the Roman, French and English public opinion toward discrimination in the treatment of juvenile offenders, as expressed in their laws, Philip Klein says:

The law went half way toward treatment of the cause in acknowledging that lack of responsible, mature thinking is partly the cause of the offense, and in establishing the presumption of only partial responsibility in the case of juveniles, but failed to go the rest of the way, however, to find that youthfulness being the cause of the lowered responsibility, it was this youthfulness or immaturity that had to be dealt with, rather than the remaining amount of responsibility. . . .

Though technically an offender against the law (the child) is really primarily a neglected child. Because of his irresponsibility and immaturity the child needs protection and training. When no protection and training are given the child it is likely to act upon its own impulses, and these, often, in cases of destitution nearly always, take the form of an offense against the law.<sup>1</sup>

The same attitude of public opinion as formulated in law is authoritatively expressed by Judge Julian W. Mack.

The underlying conception of our criminal law, despite all the reforming influences that have come in, is still that of vindication, that the state must vindicate by punishing. This ought to be completely eliminated when we deal with children. . . . A child who has committed an offense, no matter what the nature of the offense may be—even what we call murder—should be dealt with by the state, not as an adult is, merely to punish, but for the purpose of correction, for the purpose of training, for the purpose of education.<sup>2</sup>

That courts in states where public opinion toward juvenile delinquents has not yet become formulated in chancery law and in judicial practice for children's courts, are handicapped in their efforts to develop social case treatment of children, the testimony of Presiding Justice Franklin Chase Hoyt bears convincing testimony.

<sup>1</sup> "The Treatment of the Delinquent Child in the United States," an unpublished paper which traces the trend above summarized.

<sup>2</sup> Address before Judiciary Committee of the Constitutional Convention of New York State, June 29, 1915.

One of the handicaps which retards the Children's Court development at present is the impossibility of obtaining a comprehensive method of legal procedure under constitutional conditions. The court should have broader powers, and the present system of trials in children's cases should be done away with.

It savors too much of the strict, narrow, criminal trial. If chancery or equity powers could be conferred on the court it would be possible to inquire into the facts and circumstances of each case at the first hearing to see whether the child is in need of the care and protection of the state without first having to make a technical finding of juvenile delinquency.<sup>1</sup>

Social case treatment of juvenile delinquents needs first of all, then, the backing, not only of public opinion but of public opinion formulated in law and carried out in practice. A second need, hardly less essential, is a similar public opinion formulated in law and judicial procedure which makes it possible that adults who are responsible for the neglect and delinquency of children can be reached either directly by the juvenile court, or by another court on the initiative of the juvenile court. In practice this means one of three things.

(a) A juvenile court with jurisdiction over adults in their domestic relations and in other cases of adults involving children.

(b) A domestic relations court with jurisdiction in case of juvenile delinquents.

(c) Two courts, one for juveniles and one for adults in close administrative cooperation.

#### CASE TREATMENT FROM THE TIME OF THE OFFENSE UNTIL A DELINQUENT IS PLACED ON PROBATION

There are two primary essentials in good case treatment during this stage. First, the delinquent should be so treated that the process itself tends to make him better. For example, if personal custody away from his home is necessary, that it shall be in separation from offenders and custodians who incite him to further wrong and in company with those who call out what is good in him. If home custody pending court hearing is even reasonably sure of producing the delinquent when wanted, and is not of itself a further encouragement to delinquency, it should be allowed. The second essential is that all the pertinent facts be found out, not only about the offense but about the offender and his habitual experiences and activities.

The approved procedure from the time of the offense to the time

<sup>1</sup> Annual Report of the Children's Court of the City of New York, 1916, p. 36.

the delinquent is put upon probation (or dismissed or committed to an institution) is suggested by the following typical case:

Three boys during their habitual street activities of a Saturday forenoon found out that the grocer was away for the day and that the transom was open. They agreed to go home to luncheon and to meet at 1.30 and go into the store. This they did, thus becoming in the eyes of the law burglars and thieves. They carried off sweet chocolate, Nabiscoes, cigarettes, gum, candy, cookies, etc., and hid their booty in a shanty back of one of their houses. The next day, Sunday, they went far into the open country and ate their plunder. Meanwhile a smaller boy who had seen the burglary told on them. On Monday the policeman filed a petition for each of the three boys with the clerk of the juvenile court. This petition stated on oath that (name, age, address of boy) to the best of the knowledge and belief of the petitioner is a delinquent boy in that (description of the offense). The clerk acting for the judge then issued a summons upon the parents of these boys, stating that petitions had been filed charging them with delinquency and that a hearing had been set on a certain day and hour in the juvenile court, and directing that they appear at that time with the boys.

Pending this hearing a probation officer made an investigation of all the necessary personal, developmental, family, neighborhood, and school facts relating to the boys, so that the habitual activities, trend and opportunities of each boy became clear. The boys were also examined by a doctor and a mental specialist.

Specialists in the study of delinquents agree that the short period between the detection of a child in delinquency and the hearing before a judge who is to decide what is to be done with him is the best psychological time to secure the maximum degree of coöperation of the juvenile delinquent in efforts to understand the real reasons for his own misconduct and the essentials of the best plans to prevent recurrence of wrong-doing.

In cases such as the above, with all these facts summarized in writing,—so that the judge can visualize not only the particular offense but the personality, habitual life, and future opportunities of the child,—the parents, the child, the probation officer, the complainant, friends and witnesses file up and stand before the judge. Here there are as many different variations in procedure as there are different judges and juvenile delinquents, but good case treatment

demands of the judge that when the hearing is ended he shall have produced certain very definite impressions on the delinquent and on his parents and friends:

1. That they have had "a square deal" and a fair chance to tell the judge whatever seems to them important.
2. That the judge has found out the real facts—that nobody has "put one over on him."
3. That in his decision, even to commit to an institution, he acted not in anger or in an arbitrary way, but so far as his duty as a judge and the law permit, from a desire to help the offender "to do better"—"to give him a real chance."
4. That if the delinquent is put on probation the judge has made clear that the probation officer is his representative who, like the judge, is not easily fooled and will always give a square deal.

Unless a majority of those who file out of the court room have in substance received the above four impressions, the judge has lost much of his psychological opportunity to make his contribution to good case treatment of juvenile delinquents.

In this process the juvenile court judge who is compelled to work under the criminal court law is sadly handicapped for the reasons that at the first hearing all that can be taken is testimony for and against the delinquency of the child; and that a remand of the case for a second hearing is necessary in order to secure the social investigation and physical and mental diagnosis upon which alone a sound plan of action can be based and stated in the decision by the judge. In short the judge is almost compelled either to decide upon a plan of treatment, on incomplete information, or to call the child and his parents back for a second hearing after he has had time to have the necessary facts collected.

A decision upon insufficient information tends to the impression upon the child and his family either that they did not get a square deal or that the judge was fooled. A remand for an investigation often works real hardships upon poor people in causing loss of time and money and seems to them unfair. The remand also sometimes arouses contempt for a court that calls the child and his parents to its bar without knowing or getting at all the facts in the case. In other words, it is harder for a judge under a criminal court procedure to send a majority of children and adults out of his court feeling both that they have had a square deal and that the judge cannot be easily fooled than it is for a judge under the chancery law.

This is true even if the average decisions of the two judges are equally wise from a case treatment point of view.

Returning now to the decisions of the judge *re* the three boys who were mentioned above as having burglarized a store on a Saturday afternoon and who had been brought into court on petition and summons as before described, after all the necessary facts had been found out before the hearing, the judge was able to produce the four impressions above emphasized as important, although he made a different decision in each case. The investigation in the case of No. 1 showed a normal nine-year-old boy from a good home. He was mischievous and active but not vicious. He was in fourth grade in school and regular in attendance. His parents not only had a good home but now that they were alert to the need of more careful plans and supervision for his spare time, were able to connect him with Boy Scouts and probably to secure a change of behavior without further aid from the court. The judge, therefore, dismissed him to the care of his parents.

The facts in case No. 2 were that he was a twelve-year-old boy in the sixth grade. The father had deserted and the mother and boy were living with the boy's grandfather who ran a milk depot and route. The boy helped some in spare time but was much on the street. Once, after saving money for months, he had run away with other boys who planned to go south where they could see "tropical fruits and waving grain." The judge, therefore, explained that he would allow the boy to continue at home on condition that he and his mother and grandfather and the probation officer would work together to prevent further wrong-doing. He was to be kept busy and happy, not only at his work, but also during his spare time activities, which thus far had been unsupervised.

The facts in case No. 3 were that the boy had previously been in trouble for truancy and also for joining with other boys in stealing inner tubes of automobile tires from a shed used as a garage. His mother was dead and his stepmother was afraid of being too hard on him. The father was brutally severe at times but away from home most of each week. The judge explained that he must see that this boy's habits and home were changed and that the boy's best chance to reform was in an institution unless a family home under more favorable conditions was possible. At this point an older brother who was married and whose home had been visited

by the probation officer offered his home, his personal service and new school associations, together with membership in a Junior Y. M. C. A. which offered swimming and other recreations. Accordingly No. 3 was put on probation to live at the home of his brother.

In a group case like this some judges are careful to have only one delinquent and his friends present at the time his decision is given, but even if all three boys and their friends are present, the emphasis of the judge, not alone upon the wrong-doing of each, but upon such conditions of home, play, school and work opportunity and supervision as will give each boy a real chance to conquer his delinquent tendencies, gives all an impression of a square deal in the light of facts as they are. Good case treatment of several delinquents who have been caught in the same offense does not often demand identical decisions by the judge, but usually a different decision in some particular for each. To the degree that the differences in decisions are based on accurate knowledge of facts, understood by the delinquents themselves as well as by the judge, they and their friends will approve these variations in decision. Such variations in the judge's decisions, however, are not likely to be approved by the delinquents and their friends if the major emphasis, as is too often true in criminal courts, is laid on the offense rather than on the task before each offender of so living in future that no other offense will be committed.

#### CASE TREATMENT BY THE PROBATION OFFICER

The case treatment now passes into the hands of the probation officer. The equivalent of the first interview (in family cases needing a social worker), of investigation, of analysis of facts, of diagnosis, and of the formation of the outlines of a plan has already been taken.

It is now the task of the probation officer to work out with the delinquent and his parents or guardians the details of a course of life and conduct that will lead to prevention of further delinquency and to right habits and ideals of life. Right here is where too many probation officers fail to do good work. The delinquent knows he has done wrong. He usually has at least a brief desire and intention to do right. What he needs and his parents need is a clear but elastic program for the week which will give the delinquent such good



times as boys and girls ought to have, without constant temptations to evil and further delinquency. In other words he needs a possible program of things to do which seem to the delinquent worth doing in all his spare time. To this end a careful study of the resources of home, school, playground, club, park, library, etc., needs to be made by the probation officer, the delinquent and his parents, until it is clear how a week can be spent without doing wrong and yet in such ways that the delinquent can enjoy most of it. Unless such a program can be fairly definitely, but with great elasticity, laid out and approved by the delinquents, the chances for overcoming serious delinquencies are poorer than they ought to be.

It is essential to the success of probationary care of delinquents that they be helped to see and to choose possible right courses of action at the precise points where before they have once, or frequently, chosen wrong courses of action. It is plainly futile to expect reform under probation unless the child himself can be led to see and feel that right action is not only possible but worth while from his own point of view. Not alone what the probation officer thinks is right and desirable for the child, but what the delinquent himself can be led to see is right, desirable and possible, will be really effective in changing his behavior. To this end the relation of probation officers to probationers must become one of reciprocal confidence and sympathy. Underneath this, but rarely used, is of course the authority of the court. The probation officer should also have such an intimate knowledge of the habitual life of the delinquent at school, at home, in playground, street, and spare time, that the delinquent will feel the probation officer, while his friend, cannot be fooled.

Whether the probation officer should be the same person who made the investigation of the delinquent's home and habits for the hearing is a secondary question. The success of a good probation officer depends upon his skill in influencing the probationer and changing wrong behavior into right behavior, not on the mere fact that he came into the life of the delinquent before or after the hearing before the judge.

A similar question is that of reporting to the probation officer by the probationer. In some way the delinquent must be led to act honestly and on his own responsibility toward his own reform. In many cases to report to the probation officer at a certain time and

place tends to develop his honesty and sense of responsibility. The probation officer must, however, have many other sources of information and means of guidance of the probationer. If he relies on the report alone, he will often be fooled and his influence be reduced to less than nil. Good case treatment means an adoption of available means to the end that habit and voluntary behavior become right with each child. No general rules are applicable to all cases of sick morals any more than to sick bodies. Until a probation officer learns this he is not so successful as he ought to be.

The application of this principle of individualization of treatment explains what the right time and method of ending the probation period are. If opportunities for right choices of behavior for 24 hours a day for seven days in the week are found impossible for a delinquent in his home and neighborhood; or if, although good choices are possible, his actual choices are habitually wrong, the probationary period ought to end by commitment so that control may be enforced, or by some change of environment or supervision that promises progress toward reform. On the other hand, when not only real opportunities for right choices of behavior have been seen by the delinquent but he has learned to choose them for himself, the probation officer should give the delinquent the encouragement of knowing that the authority of the court has been ended. Likewise this termination of probation should be entered on his record at the court. He should know that henceforth he is thought strong enough to do right with merely the personal encouragement of the probation officer. Whether or not this close of the period of probation shall be celebrated by having the delinquent released in person by the judge cannot be stated without knowledge of the case. Plainly some girls who have left sex offenses far in their past, should not be compelled to go again to court. Good case treatment of delinquents demands, at the close, as at the beginning and all through, that the process of release from probation should be not a matter of cold routine, but an act of "constructive friendship."

The final step is that the probation officer should be a voice in his community urging, in season and out of season, the suppression of causes and conditions which make for delinquency and also urging with still greater earnestness the provision of adequate facilities and agencies that make for wholesome juvenile life and education.

## THE HOMELESS

BY STUART A. RICE,

Formerly Superintendent, New York Municipal Lodging House.<sup>1</sup>

Intelligent treatment of homeless men and women requires a vivid understanding of the reasons for their homelessness. Under present methods of industrial management this condition is demanded of a vast number of workers. By becoming or remaining homeless, they render specialized services of great importance to society. Nevertheless, the living and working conditions under which the services are performed react disastrously upon their character, even to making them subjects of social case treatment!

The truth of these statements is to be illustrated in the employment office districts of any large city. A recent inspection of the labor agencies from Fourteenth Street to Chatham Square, along the Bowery in New York, disclosed, in all, opportunities for fourteen men with families! And these were required to be "foreigners!" The thousands of other jobs offered (tacitly understood, not openly stated) were for "homeless men only."

### THE HOMELESS IN RELATION TO SOCIETY AND INDUSTRY

The writer has been a member of one of those unkempt companies you have seen slouching along the street from the labor agency to the railroad depot. He has made his abode in the bunk houses provided for these men. His experiences have led him to a real appreciation of the abnormal living conditions that are forced upon great masses of casual and seasonal workers throughout America. Many of the evils inevitably resulting from these unnatural conditions may be removed in individual cases by careful diagnosis and persistent social treatment. But the background of industrial organization (or disorganization) will in nowise be altered by the most careful case work. Either the men and women recorded in our own case files, or thousands of others like them, will still be compelled to live abnormal lives in order that they may live at all.

<sup>1</sup> At the time of writing this article Mr. Rice was still holding this position.  
—EDITOR.

Homeless men are demanded to build the bridges and tunnels, the irrigation systems and railroads, to harvest our forests and embank our rivers. They are the pioneers of modern industry. They go hither and thither to the rough, unfinished, uncomfortable places of the world, to provide homes and civilized comforts for those of us who follow. Meanwhile they live in bunk houses. Homeless women are preferred to do the "dirty work" in our public institutions and to scrub and clean at night in our hotels. Generally only they are willing to accept the work and the hours demanded.

Homeless men, for the most part, make up our "labor reserve." This reserve is highly essential. If some workers were not unemployed in slack or normal conditions of industry, additional hands could not be employed in periods of increased activity. The homeless are usually the less efficient. Furthermore, they are without dependents. Socially and economically, therefore, as things now are, it is advantageous for society that they shall be the first employees discharged when reductions in force are essential and likewise the last to be reemployed.

Homelessness and intermittent employment, therefore, go together. They are the major characteristics demanded by society of a large number of its workers. But certain other characteristics are encouraged. In the absence of organized social control over industry a restless instability of temperament is desirable to afford fluidity to the labor supply. Employees' indifference to cleanliness is fortunate for numerous employers who find it impracticable to supply bunk houses with running water. Even the periodical debauch in the city after pay day has psychological results which prove convenient to the employer. Men or women without money are docile. How otherwise could they be induced to return to jobs affording no chance of normal living? These unfortunate developments of habit and character we attempt to combat in individuals by social case treatment. Yet, they are in a sense vital elements in our patients' professional training!

#### CLASSIFICATION OF THE HOMELESS

It is convenient to use the following grouping employed by Mrs. Alice Willard Solenberger:<sup>2</sup> (1) the self-supporting; (2) the temporarily dependent; (3) the chronically dependent; (4) the parasitic.

<sup>2</sup> A. W. Solenberger, "One Thousand Homeless Men," p. 10.

We may say with approximate correctness that in the order named, these classes mark the degrees of progressive deterioration through which every homeless individual *tends* to pass. That more men and women of the first two groups do not actually pass into the third and fourth is a sure evidence of fundamental human character. Everything in the lives of homeless men and women drives them in the direction of chronic dependency and parasitism. Many fight on against odds, day after day, to retain their precarious foothold upon the social ladder; others go down in the struggle, their spirits unbroken to the end. Still others, "exhausted by three or four generations of overwork, on the slightest menace of lowering prices the first to be discharged,"<sup>3</sup> prove easy victims to the disintegrating tendencies of their environment.

#### THE GENERAL AIMS OF CASE TREATMENT

The first requirement in social treatment of the homeless adult is to check his progressive deterioration toward chronic dependency or parasitism. Existing facilities for constructive treatment are very meagre. Our efforts are everywhere counteracted by the encouragement which society gives to the very tendencies in our patient that we desire to eliminate. If we are dealing with large numbers of the homeless we cannot expect a restoration to normal living in more than a small proportion of cases. The best work we can do at present, therefore, is to assist the bulk of our patients to "hold their own."

Another general objective is in reality a matter of diagnosis rather than of treatment. In any group of homeless individuals there may be singled out proper cases for specialized treatment in which homelessness is a factor of minor significance. The sick, insane, feeble-minded, blind, handicapped, inebriate and immigrant are regarded as such typical cases in the volume of which this article forms a part. All of these are found among the homeless applicants for shelter or relief at any municipal lodging house or charity application bureau. Many lost and broken fragments of families may be recovered from among the homeless. Married men or women, and boys who have run away from homes, will always be discovered if applicants are carefully interviewed. As soon as the

<sup>3</sup> Edmund Kelly, "The Elimination of the Tramp," p. 4.

facts in these cases are ascertained, the problems become those of family case treatment and should be referred to a family agency.

With the development of facilities for diagnosis and with the building of additional agencies for specialized treatment, the social function of an agency or institution for the homeless will become primarily that of a clearing house. In every way afforded them social case workers should further the breaking up of our homeless group into its component parts.

#### TREATMENT OF THE SELF-SUPPORTING

The most numerous group of homeless, employed persons with whom I am acquainted is that which is known at the New York Municipal Lodging House as "the Saturday night clean-ups." The registration of applicants is proverbially largest on Saturday nights. The men responsible for the increase are generally employed through the week, usually at odd jobs that must be "caught" each morning. Consequently, by seeking a free bed and meals at the Municipal Lodging House on Saturday night, the earnings of that day may be reserved for Sunday's living expenses. Some wish to "see the doctor"; others want to "get a bath and fumigation," in order to rid themselves of vermin acquired in cheap commercial lodging houses; still others desire to have their clothing washed in the laundry of the institution. Women frequently are led to our doors from the same motives.

The problem here represented is primarily one of labor and housing rather than of social case work. There is no formula of social case treatment for the needs of these men and women. Most of them are independent in attitude and fairly self-satisfied regarding their economic and social status. They will not accept services from the institution other than those they request. If molested by "social service busy-bodies" they will not return, and whatever opportunity existed for their physical and moral sanitation will have been lost. However, if their "clean up" is supplemented by a friendly but impersonal welcome the institution may at least continue to be a very important agent in community sanitation.

A group of self-supporting men and women more susceptible to case treatment than those described above, is illustrated by the low paid hospital helper employes of the public charitable institutions of New York City. Customarily they are recruited from the

patients and inmates of the institutions themselves. They work for a much lower rate of compensation than is paid for equivalent services elsewhere, and they are recognized officially by the City of New York as a distinct type of semi-dependent employe.

In his dual capacity of employer and landlord, the head of an institution is in a position to render social service to these employes of a kind impossible when they are patients, inmates, or applicants for relief. The Municipal Lodging House recognized this fact in the formulation of a definite policy regarding the filling of positions within the institution; so far as efficiency in administration permits, the Social Service Bureau is the employing agency for these house positions. Lodgers who show possibilities of reclamation become our employes. As soon as possible they are promoted, and eventually are placed in permanent outside employment, carefully selected for its influence upon their habits. In this manner, similar opportunities are continually made for other lodgers.

It is most essential for the success of this program of social service to employes that group loyalty and group interests be developed. Frequent meetings of employes should be held at which common problems of organization and management may be discussed in a democratic way. Outdoor athletic sports are invaluable as a means of promoting loyalty. Holidays may be the occasion of gatherings at which songs, instrumental music, recitations and special features will supplant the institutional atmosphere with that of a community festival.

If regular recreational and educational opportunities are not to be had at the institution they will be sought in the corner saloons. Various clubs are practicable. A large reading and smoking room provided with books, papers, magazines, writing materials and games is a popular success at our Municipal Lodging House. I was once complimented by an unpaid employe for the choice selection of Greek and Latin poets upon our shelves. He chanced to be a former Yale man. The books (received in a donation of cast-off materials) had given him many hours of intellectual pleasure!

Supervision of employes' expenditures is helpful in many instances. Some have never learned the value of money and spend it foolishly. Others are unable to withstand the temptations of drink. Employes at the Municipal Lodging House are encouraged to deposit their earnings with me for the purchase of necessities, for transfer to



a bank, or for investment in War Savings Stamps. A positive gain in self-respect is evident in the individual who has purchased clothing or accumulated savings. In some cases I have found it desirable to keep employes continuously in debt to me by advancing them money for legitimate objects. The amount due is later deducted from their salaries. The invitation to membership in the Red Cross was recently accepted by five-sixths of the hospital helper employes of the Municipal Lodging House, but a small proportion of whom were receiving in excess of twenty dollars per month.

The development of a system of credit or of token money, such as has been found effective at Sing Sing, would be of the utmost value in the rehabilitation of these men and women. The object of such a system would be to pay employes in the things they require—tobacco, clothing, shoes, moving picture tickets, etc. The present cash salary payment is in reality an inducement to spend the month's wages in one grand debauch. Saloon keepers in the neighborhood of public institutions habitually ascertain when employes are to be paid and are shortly after in possession of a large part of their earnings.

Appeals for assistance are often received from men or women who have paid employment but who are temporarily without funds. It should be the policy of a social agency to extend whatever credit is needed by these individuals for necessities. This should be a business transaction throughout and the suggestion of charity eliminated. The individual to whom credit is advanced may be placed upon his honor to repay the loan when he is paid. Upon their verbal promise to repay the institution, a number of men holding positions receive maintenance at the New York Municipal Lodging House every month. The independent and self-respecting manner in which some of these men walk up to the counter to pay their bills speaks for the effectiveness of the method.

#### THE TEMPORARILY DEPENDENT

The demoralizing effect of involuntary unemployment on individual character is not due to the absence of employment itself, but rather to the inevitable *consequences* of its absence. It is due to the enforced lowering of living standards and to the worry and uncertainty of seeking another job. Even the most callous man or

woman is sensitive to continued rebuffs in a fruitless search for work. I know of nothing that will so quickly shatter the self-respect that is essential to a freeborn individual.

A period of unemployment from which these consequences are removed, in other words a *vacation*,—is considered to be of greatest value for the worker's reinvigoration. It follows that if unemployment could be relieved of its present psychical and material results, it might become a boon rather than a curse to the worker.

The responsibility for finding a new job, therefore, must be lifted from the individual who is out of work, and placed upon an employment exchange. It logically follows that the responsibility for his efficient physical maintenance while unemployed must also be removed from the individual. He may then utilize his period of unemployment as a time of physical and mental reinvigoration. Good food, recreational facilities and positive educational opportunities in a broad sense may result in a refreshed, better equipped individual when the next job is found, rather than in a weakened, discouraged and less efficient worker.

There is an apparent danger that in this shifting of responsibility the unemployed individual may become pauperized. No system which maintains a worker in physical and mental efficiency during idleness can have this result to the same degree as one which allows him to deteriorate and lose physical and mental efficiency. Nevertheless, he should be made to feel his own responsibility toward the agency that has assumed the risks of his unemployment. A work requirement clearly sufficient to pay the costs of the advantages received is one means of avoiding any pauperizing tendency. If this is impracticable, the individual should be obligated to repay this expense when he is once more employed.

Many periodical drinkers may be classed as temporarily dependent during lapses from sobriety for the reason that during the greater part of the time they are self-supporting. Their contact with social agencies usually occurs immediately following a periodical spree while they are still recovering from its effects. The victim is invariably repentant. Advice, moral suasion and "preaching" at this time are usually quite useless, as the convalescent will go farther in his self-denunciation than the social worker in his "preaching." The first necessity is to restore him to a condition of physical efficiency. Good food, sleep, rest and fresh air are

essential. When he is once more ready to take work his choice of a position becomes of utmost importance. Factors of his old environment may have been responsible for his downfall. If employment can be obtained where these factors do not exist, the next spree may be averted. Even if sprees continue, but the intervals between them are lessened, there is a net gain for society and the individual.

It may even be necessary to accept our patient's periodical necessity for drink as a fact, and attempt to arrange his employment so that it may be obtained without interference with his work. The following example is in point. A male stenographer with whom the writer is well acquainted lived for some time in a charitable institution where he was employed. Because the head of the institution was both employer and landlord, sobriety and good behaviour on seven days per week were required of employees. Each few weeks brought the stenographer's inevitable fall from grace. Finally, when all interested in his case despaired, he obtained a position with a commercial house where employers cared nothing for his habits outside of working hours. For two years he has continued to give good satisfaction to this firm, has not missed a day and has received promotions. The interval between Saturday noon and Monday morning has been sufficient to enable him to follow a drinking schedule that has not interfered with his work.

The writer views pragmatically the question of religious influences in the case of drinking men and women. Without doubt there have been many complete and successful "conversions." On the other hand, I have known a number of men who were most devout testimony-givers at mission services who were elsewhere loud in their blasphemy and religious ridicule. Likewise, I have known deeply religious men to be hopeless inebriates. Where early environment affords a basis of appeal, religious instincts may prove an effective starting point for rehabilitation.

Applications are continually received at the Municipal Lodging House of New York from hospital convalescents, pre-confinement cases and dispensary patients. The first have often been discharged prematurely from over-crowded hospitals. The second and third ought many times to be admitted to a hospital but are excluded for the same reason. In the meantime the problem is forced upon agencies for the homeless.

These cases emphasize the necessity for a competent medical examiner on the staff of the agency for homeless. Our Municipal Lodging House physician must continually assume the rôle of an advocate. He must prove clinically, and sometimes dialectically, that certain homeless inmates are sufficiently ill to make their admission to the hospital imperative. This situation is vaguely understood by many of our homeless applicants, who come to us requesting to be sent to hospitals. Convalescent, dispensary and maternity cases should be provided with light work suited to their physical conditions. Great care is essential, however, lest overwork result.

#### THE CHRONICALLY DEPENDENT

Very few persons who have once become chronically dependent ever regain a place among the self-supporting. The result is possible by intensive personal work with a minor number of cases. The study at present being given to the problem of reabsorbing war-cripples into industry will doubtless shed much light on the possibilities of rehabilitation of certain types of chronic dependents. "Shell shock" and battle wounds undoubtedly have their counterparts in occupational disease and industrial accidents. The development of plans for training war-wrecked men and finding employment openings suited to their individual handicaps, will be of quite the same advantage to men who have been similarly wrecked in the struggles of peace.

The aged and infirm are conspicuous among the chronically dependent. It is customary to consign them promiscuously to the almshouse. Yet many of them to avoid this "disgrace" are attempting under terrible handicaps to remain self-supporting. Employment may be found for some in positions where age is no great detriment. The first placement made by the Employment Bureau of the New York Municipal Lodging House was of an elderly woman who was to have been sent to the almshouse. She is still in this position. There are many such cases.

In spite of these possibilities of delaying the inevitable approach of death or complete dependency, the majority of the aged and infirm men and women who appear at institutions for the homeless must be sent to the homes for aged and infirm. A great deal of tact, good judgment and sympathy is often necessary to persuade these pitiful individuals that this is their only possibility.

Men and women with physical handicaps are infrequently doing the work for which they are actually best fitted. A man who lacks an arm or fingers may be trying to make a living by trucking in a freight house. Men with weak eyes register for positions as clerks. The struggle for existence is severe and discouraging for those who are thus handicapped, and who have no one to guide them into employment for which they are better suited. Great care is required to prevent them from following the easy road into mendicancy,—a road continually opened by the unthinking but well-intentioned almsgiving of the public.

A desirable readjustment of employment may sometimes be made in a placement agency. The weak-eyed clerical worker may be led to discover that he is adapted to employment where the intensive use of sight is not essential. The one-armed longshoreman may be given work as a watchman where the loss of an arm is not an important disqualification. If the handicap be serious and the individual discouraged or unenterprising, however, the assistance of special agencies may be necessary. The New York Lighthouse for the Blind, The Association for the Aid of Crippled Children and The Old Men's Toy Shop maintained by the Association for Improving the Condition of the Poor have demonstrated something of what may be accomplished in readjusting the lives of the handicapped.

Mental deficiencies are responsible for much chronic dependency. Many instances might be cited of morons and even medium grade imbeciles, aimlessly drifting from one social agency to another over extended periods of time, without any attention being paid to their mental conditions.

During the early spring of 1914 the writer lived for a number of days in the New York Municipal Lodging House disguised as a homeless applicant. While he was employed one morning upon one of the institutional "work details" to which he was assigned, his attention was attracted by a boy whose physical degeneracy and mental feebleness seemed apparent at the most casual glance. The boy stated that he was twenty-one years of age and had just been put out of his father's home in Long Island City. His responses showed the mental development of a child. Two years later, after the writer had become Superintendent of the Municipal Lodging House, the self-same boy was observed one night at our registration

window. Inquiry developed the amazing fact that for these two years he had been drifting about the streets of New York, working at occasional odd jobs, a frequent applicant at social agencies. Yet never in that time had any one taken the trouble to have his mentality tested. The mental clinic to which he was subsequently sent classed him as an imbecile with a mental age of six years!

Whenever mental deficiencies in a patient are clearly established, institutional care under strict supervision is the only satisfactory solution. But the insufficient capacity of appropriate institutions renders the solution unavailable in multitudes of cases. When the commitment to institutions of morons and harmless psychopaths has been impossible, we have found it of value to send them to employment in menial capacities in public hospitals with the full coöperation of the hospital authorities. Although employes, they are then under an informal supervision by superiors of professional experience.

Where habits of drink appear to be the predominant factor among the causes of chronic dependency, we must again turn to institutional treatment as offering the only probability of cure. But available facilities for homeless inebriates are even less adequate than facilities for the feeble-minded. The City of New York provides a farm colony for inebriates and drug addicts at Warwick. This is the only public establishment in New York where farm colony treatment for inebriety may be obtained. Yet it has a permanent capacity for one hundred men only. The Municipal Lodging House could furnish this number of men who need its method of treatment on almost any day of the week!

Mental deficiency, illiteracy and alcoholism are sometimes combined together, in varying degree, in a single homeless individual. No one of the three factors may be sufficiently pronounced to make possible specialized treatment for that handicap alone. Yet in combination they produce an individual of general incompetence who seems quite hopeless as a subject for constructive effort. Many of these general incompetents are the products of child-caring "homes." Condemned to institutional existence at the beginning of their lives, as adults they appear to have no potentialities for anything better. Some were constitutionally inferior at the start. They have insufficient ambition or persistence to follow of their own volition any program which they, or someone

for them, may outline. Forceful commitment to a farm colony and vocational school constructed after the Swiss type would offer the best means of benefiting the individual and making him self-supporting. There is idle agricultural land in abundance for such colonies, while the importance of increasing our agricultural output gives a powerful additional argument for their establishment.

Proposals for the creation of such colonies were made in New York last spring. The proposals contemplated the use of the Municipal Lodging House as a clearing center from which individuals in need of farm colony treatment would be presented to the magistrates' courts and by them committed on indeterminate sentences to the farm colony.

### THE PARASITIC

Many men and women, normally self-supporting and independent, will become temporarily parasitic under certain circumstances. The migratory worker en route to the harvest fields is an illustration. Valuable and respected employees of the Municipal Lodging House when drinking have been seen begging promiscuously upon the streets.

A large minority of homeless men, therefore, are occasional beggars, as well as occasional applicants for charitable assistance. But the professional mendicant is seldom seen at charitable agencies. He is invariably "wise," and can "work the public" much better. Furthermore, his income is usually sufficient for his support.

The need or desire for obtaining money without work is undoubtedly the initial occasion for mendicancy. But this desire soon becomes only one of the impulses which keep beggars at the trade. Mendicancy has its roots in gambling instincts and it satisfies a certain craving for adventure. The constant possibility of a large gratuity, the never ending speculation as to the next benefactor, the fascinating game of "hide and seek" with the police, all give to the mendicant's life a daily feverish adventure, the counterpart of which is found only in gambling, prospecting, and other hazardous occupations.

Since a thirst for adventure in the mendicant's soul is satisfied by his manner of living, no mere assurance of a livelihood equal to or exceeding that which he obtains from begging will suffice to



wean him away from it. Only a legitimate occupation offering the equivalent in chance and adventure will serve the purpose. Many street trades do offer an approach to this equivalent. A news-stand where the crowds are surging past may prove the means of restoring the mendicant to productive life. In the cases where age or extreme physical handicaps render self-supporting employment impossible, the mendicant must be committed to an almshouse. Severe measures, if necessary, are justified to break up the wasteful and fraudulent practice of street begging.

The "I won't work," at least among the lower strata of society, is largely a popular superstition. I have seen very few men, not classed as mendicants, vagrant psychopaths or mental defectives, who would not work under conditions which they considered to be just. Not long ago it was generally believed that some men and women preferred unemployment, homelessness and hunger to honest labor. This opinion seems to have been definitely abandoned by thinking people. In January, 1915, 2,500 homeless dependents were sheltered in the Municipal Lodging House of New York each night. This population was reduced within eighteen months to little more than 100 per night. The same relative reduction occurred in similar institutions throughout the country. It is very evident that the great majority of the alleged "I won't work" of three years ago secured work and are still employed. Yet this rule, like all others, is occasionally proved by its exceptions. It is sometimes found necessary to refuse the privileges of the Municipal Lodging House to men and women who will not avail themselves of honest opportunities for employment.

The charity rounder, the last of the parasitic types which I have particularized, is usually a rounder because he has never learned to do anything effectively. He follows the easiest way. When placed at some simple task within his experience and intelligence, he may serve faithfully and well over considerable periods of time. Definite training for simple tasks, followed up by careful supervision when employment is obtained, may definitely remove him from the parasitic class.

The methods of case treatment described above are crude and undeveloped. We have hardly gone further than attempts to define our problem. Among the human gains that may come from the world war, will be new and better methods for the treatment

of the homeless. For still greater gains may we hope: that out of the slaughter may come a new estimate of the value of human life; that homelessness as a condition demanded of workers in return for existence may be banished; that the right to normal living may become imbedded in the social conscience of our people.

## ALCOHOL AND SOCIAL CASE WORK

BY MARY P. WHEELER,

Secretary, Clinton District, New York Charity Organization Society.

Like all other problems in social case work, the problem of the excessive use of alcohol is seldom if ever found alone. It is almost invariably bound up with other complications. Granted that either the father or the mother of a family uses alcohol, there is inevitably connected with that fact a chain of events which often brings social, physical and mental problems with them. We are frequently so engrossed with the fact that our clients use alcohol to excess that we forget to see the other problems involved; or we may see the other problems first and come to the fact of alcoholism after much time has been spent planning for the family's welfare along other lines. In our investigation in all cases we should be building up a group of facts both physical and social which when put together should forewarn of a possible hidden drink problem.

The combinations of problems in which drink is a factor which seem to occur most often are drink and immorality, drink and a mental defect or mental weakness, and drink and a physical defect. The following example illustrates the first combination:

Through failure to provide for his wife and child, Mr. D. who was obviously a drinking man, had lost a good home. The family was found living in a miserably furnished room. The investigation confirmed the story of degradation through drink. There was a painstaking period of treatment which included both institutional and home care and also the religious influence of his church. It was learned finally, instead of at the outset, that Mrs. D. was also a drinker, a secret one, and immoral. As Mr. D. had no confidence in his wife, there could of course be no real incentive for a home. The mixed problem should have been recognized at the beginning.

In the following instance we have an illustration of drink and a mental defect.

Mrs. W. talked freely of her condition and admitted she could not take alcohol without its immediately affecting her. We knew her husband earned good wages, yet we found them living in a basement, having scarcely any furniture. It developed that a sister continually tempted Mrs. W. to drink and the husband himself deliberately brought alcohol into the house. But most important, we found that Mrs. W. was worried because she "heard voices." We then took her to a mental

clinic where she was given medical attention and careful advice. Her interest was aroused in freeing herself. She insisted on staying at home, attending to her house and children. In a frank talk with her husband we made him face the fact that he had been doing a large share in dragging his family down. With everyone working together with equal knowledge of the facts and the goal to be reached, this family won out. Surely, however, this was not a simple case of a drink problem.

In the third case, Mr. X. said he drank because he felt sick all the time. We found the real trouble was tuberculosis, following years of drinking and unsteady habits. The plan of treatment was not made primarily for the man who drank. It was for the man with a communicable disease. It is indeed imperative that treatment begin with a correct diagnosis.

If it is true that the problem of alcohol is seldom if ever unattended by other complications, it follows that one can never generalize regarding the users of alcohol. The principle of individualization of treatment applies in this field as in every other field of social case work. Our plan of treatment is further complicated by the fact that the user of alcohol is often a member of a family group which must also be taken into account. Too much stress therefore cannot be laid on the importance of studying the client, of getting to know his background socially and physically. Although much may be learned from our client himself, it is often preferable to gain much information before any decisive interview with him takes place, in order that the worker may be more free at that time to begin treatment. Such information should include knowledge of whether this is his first breakdown or whether he has made and forgotten good promises before. The age of our client is another important factor. If he is young, he has no doubt taken to drinking for social reasons, or to try to prove how manly he is. If he is middle-aged, it may be the result of a social habit formed in his youth. If he is older, he may be trying to forget that he is past his best working period or he may be trying to keep himself stimulated to compete with younger men. If our client is a woman, this should be gone into even more carefully and special attention should be paid to her nervous organization.

While in most case work it is considered best to interview our client in his or her own home, in case work with the man or woman who drinks, it is usually wiser to plan for an office interview. The elements necessary to make an interview successful are privacy,

lack of interruptions, feeling of freedom, candor, openness and plenty of time. In the office the worker can better control the situation to include these desired elements and can also bring the interview to a close at the psychological moment. The atmosphere there is more conducive to coming to conclusions. The drinker, if he is a man, must feel the thrill in carrying out an agreement made in a business-like manner. His pride is aroused. He feels in a very real sense that he is chiefly responsible. Such a sense of responsibility, strengthened by simple encouragement from someone in whom the client has confidence, is one of the most potent factors in success.

A vital principle in working with individuals who drink, as in other forms of case work, is to work *with* the individuals in question, allowing them every opportunity to express their own opinion as to the difficulties in which we find them and helping them to make their plan for the future. Our treatment should as far as possible be based on their plan, or if we cannot accept their plan, we should make every effort to lead them to our plan so gradually and carefully that it becomes their own. The following will illustrate:

In the past we had been good friends of the G. family. We had not seen them in some time, however, till Mr. G. came in of his own accord to tell us about the days of hard drinking which had preceded his waking up to find his family literally broken up and separated. When asked his plan for the future, he shot back a reply which showed that his experience had really touched him, and that it had vitalized him into making a plan to which he had mentally committed himself. Its chief elements were change of habit, a new routine of life and the objective of a reconstructed home. His wife, broken down from overwork and worry, was in a hospital. His children had been taken by the S. P. C. C. Because he felt that the responsibility was all his, he wanted to start off immediately trying to rectify his errors. His plan was sound in every respect and we cooperated with him to the end of making it possible for him to succeed.

In the case of Mr. B., his plan included the breaking up of his own home, having his wife committed through court for a cure, having the S. P. C. C. take his children in order to bring his wife to a realization of her responsibilities and opportunities and banishing himself and his oldest son to a furnished room life until the family could be reestablished on a firm foundation. Getting Mr. B. to put into words the long road ahead of him was perhaps the biggest possible help both to himself and to the case worker.

In making our plans for the individual who drinks, we find two possible lines of action, care at home or institutional treatment. Before we decide on either course of action, we want to have our

facts very clearly in mind. In his Report of the Inspector under the Inebriates Act for the Year 1909, Mr. Branthwaite places every alcohol user in one of three groups. They are as follows:

1. The occasional drinker, those who are strictly moderate in their indulgence.
2. The free drinker or occasional drunkard, those who drink more freely than is consistent with strict moderation or who are occasionally drunken.
3. The habitual drunkard or inebriate, those who are habitually drunken or being usually sober, are subject to occasional outbursts of uncontrollable drunkenness.

It is the individuals who fall in the first two classifications who give us our best opportunity for care at home. This plan of treatment undoubtedly has some disadvantages which must be realized at the outset. For example, we are hampered in a large city, no less than in a small community, by the attitude of the public towards the persons who are trying to cure themselves at home. On the one hand, there is the public which sentimentalizes; on the other, the public which is harsh and sees no hope for the drinker. Both of these attitudes are manifestly unfair to the individual; we must seek to educate the public, on the one hand asking people to give the individual a chance, on the other, expecting them to hold the individual up to standards, to demand of him that he attain the best of which he is capable. There are, on the other hand, undoubted advantages in home care of which we must take account. Among other things, the individual's pride and self-respect are saved; there has been less of a break with the past, there are fewer explanations and apologies to be made. This applies especially in regard to the children of our client, particularly the younger ones. Above all, if the individual can remain in the home and continue in the support or care of the family, the psychological effect is very great. Such a course of action builds up self-confidence and self-respect, both of which are vitally important.

Weighing the advantages against the disadvantages, we still can not choose home care unless we are sure of other facts. Is such a plan conducive to the welfare of the family as a whole or will the family life be materially injured? Further we must be sure of the sincerity of our client in his effort to get hold of himself and we must be sure that we can direct his plans, if not actually control them. We must be sure that we have the needed resources to make home

care a success in the given case. First among such resources is the proper medical care. It is vital that from the outset we know the physical condition of our client in order that we may build up his or her health in every possible way. The plan of a good physician for sound health must be the foundation stone on which we build up our other plans for treatment. Special medical treatment may also be used, depending upon the needs of the patient. Mr. Branthwaite, however, does not believe that any of the cures for alcohol have an inherent value. If the patient believes that the drug will cure him, then by all means try it. This belief will strengthen his will. Other resources sometimes tried are suggestive therapeutics, electrical treatment, hypnotic suggestion and religious influence. With some this latter may be a strong help; with others the gospel mission may do better work.<sup>1</sup> Above all, interesting and remunerative work and relaxing diversions are invaluable. All these resources may be tried in the effort to gain our end which is the ability of the individual to break his past habits and to establish self-control. "There may be more control there than anyone thinks," says Branthwaite. "Awake the dormant self-control."

It is the persons who fall in the third classification above quoted who constitute the group for whom institutional care is most often needed. It is therefore essential to have clearly in mind the characteristics of this group. Dr. Irwin H. Neff of the Norfolk State Hospital, Massachusetts, says that inebriety is an expression of nervous weakness and that upon this weakness is founded a habit which we call drunkenness. In other words, there is in the inebriate a definite pathological condition which predisposes him to an excessive use of alcohol if he drinks at all. It is possible that inebriety may be acquired by long continued indulgence but usually inebriety is inherited as a nervous condition, remaining latent or becoming evident according to circumstances of habit and environment. Dr. Neff concludes that inebriety is a definite disease and must be treated as such, although much can be done along the line of establishing new habits and by personal influence as in the case of both the occasional drinker and free drinker. Because there is a definite pathological condition in the case of the inebriate, his or her only hope lies in having the possibility of drinking entirely removed, at

<sup>1</sup> For a brief discussion of the value of gospel mission, see American Red Cross Publication 200, July 16, 1917, pp. 41 and 42.



least temporarily. It is for this reason that institutional care (including farm colonies) is advisable for this type of clients. The place of institutional care in the treatment of inebriety has been so well covered in the article on "The Practical Treatment of Inebriety in a State Institution" by Irwin H. Neff<sup>2</sup> as to make further discussion unnecessary here. The reader will there find a full discussion of after care in which work all the skill of the finest type of social case work is involved.

In all types of cases in which drink is a factor, be they the occasional drinker, the free drinker or the inebriate, it is essential that there should be given to the man a definite objective in life to help him overcome his battle with drink. This objective must be chosen with a full knowledge of the possibilities of the individual and must never be beyond his reach. It is needless to add that the objective should be such as to call forth the very best efforts of the client, awakening his imagination and arousing him to a new life.

<sup>2</sup> Proceedings of the National Conference of Charities and Correction, 1915, pp. 396-407.

## THE IMMIGRANT FAMILY

BY EVA W. WHITE,

Director, The Extended Use of the Public Schools, Boston.

The test of a good case worker is found in the many-sided field of social treatment as it relates to the immigrant. Not only is high skill demanded in analyzing personal difficulties but a knowledge of the customs and traditions as well as the inner hopes and aspirations of the immigrant is also imperative.

It is agreed that only a beginning has been made in social diagnosis in general, but it is not so certain that the same humbleness of spirit exists in regard to the plotting of a plan of action in relation to our foreign residents. Else why are so many philanthropic organizations found in immigrant communities still carrying on their case work in the rudimentary, undifferentiated fashion of considering certain human traits to be so basic that reactions are identical whether a man be a Russian or an Armenian, a French Canadian or a Pole? Societies recognize the fine gradations of analysis that are coming to be required in getting at the variations of mental power and of manual aptness. They draw on the knowledge of the psychiatrist, the psychologist, the vocational counselor, and yet most of these same societies meet the problems of the immigrant apparently in complete innocence as to the play of dominant racial experiences.

There has been a curious lapse in this respect in the building up of case work technique. In going about the country the writer has been interested in inquiring in regard to this question of specialization in case work for the immigrant and it would assist the general cause considerably if readers of this article would do the same. It will be found that in the majority of our large industrial areas where the issues, both personal and social, are intense, as well as in many of the foreign sections in our cities, organization after organization is functioning almost exactly as it would function in an American-born community. Two or three of the more important members of the nationalities living in the towns or districts of cities may serve on committees or boards of management and interpreters may be

used, but the executives who are intrusted with leadership will be found far too often to have had no experience that fits them to understand European customs. They have neither traveled abroad nor resided in local foreign colonies, and often they are amazingly lacking in an intelligent grasp of the fundamental issues involved in the adaptation of the personnel of their districts to the requirements of American living. Maximum results in the way of assisting the immigrant and his family will never be obtained so long as this holds true, nor will the community be stimulated as it should be.

It must be said to the credit of social work that in certain of its branches it has shot ahead of education. Americanization societies, immigrant protective leagues, and travelers' aid groups have shown how inadequate school work for immigrants has been and is. Cruel as much of the hyphenated American propaganda was, it roused the country into realizing what it had not done and an important part of the national defense program is now concerned in working for the best interests of the immigrant and, therefore, of ourselves. Night school procedure is gradually changing. Day classes in English and in other branches of study are operated for the benefit of night workers. Far greater attention is paid to instructing the non-English speaking mother. The schools are throwing their doors wide open for lectures, forums, civic clubs and discussion groups, as well as for musical societies, so that the thought life may be expressed and the refining elements of dormant art consciousness may be developed and brought out.

#### LARGER ASPECTS OF CASE WORK

The war has caused the question of immigration to be faced squarely, and every social, civic or philanthropic society that has had to do with the immigrant should take account of stock. The arguments pro and con for immigration are many. Economists take sides; the sociologists are not in one camp; those who are interested in political science are found to be divided. Among the general citizenship are those who believe in restricting immigration and those who do not. Where do the social workers stand? Sentiment, intuition, generalizations by only a few observers over only short periods of time will not help. Massed experience in which the varied elements of physical standard, mental power, industrial success, political effectiveness and ethical outlook are gauged not as sepa-

rate ends in themselves nor through abstraction but in the blend of personalities known, is the contribution demanded of social workers. Social workers may well ask whether their case work is in the hands of persons with the requisite breadth of understanding. Is case work so organized as to give the necessary data? Is the range of contact of secretaries such as to enable this data to be interpreted in its relatedness, not merely from the point of view of the individual but in order to contribute to problems such as the immigrant and labor, the immigrant and the race stock. These are some of the larger aspects of case work.

It is not the object of this paper to stand as an essay for or against any of these opinions on immigration but rather to point out that the case worker who does day to day work in immigrant communities and who is not viewing each day's experience as material to assist in the shaping of public policy toward the alien, not only negates social work but also becomes a deterrent factor in the progress of our knowledge of a subject which has untold influence on the future of America.

No society should be satisfied with a worker whose results are merely tabulated by jobs found, medical assistance given, or the number of children's difficulties that have been straightened out. A certain proportion of successful results is to be taken for granted by any one who has been trained for a calling. Efficiency comes from what is played up out of personal contacts. Here is where a case worker falls down unless the tangled scope of the immigration problem is clearly sensed and unless the bristling questions that are being faced by outlying sciences as they play into the field of social work are understood well enough to be tested by each individual need or family necessity.

For example, what policy does the worker advocate in regard to industrial adjustment as a result of experience with out-of-work cases? How do the immigrant cases differ from similar cases which involve the American-born? What is the statistical comparison of disease between a given race and the American-born? If the immigrant is more resistant than the native-born, why? If less resistant, why? Do local case histories tally with available statistical material? If not, why? A contribution may be lurking in such a search for fact within the range of the sphere of the case worker.

## PROPER QUALIFICATIONS FOR CASE WORKERS

Granted that this interplay between the actual needs of men and women is known and that the issues involved affecting our social structure are recognized; granted that the method is adopted of analyzing each person's difficulties in the light of the group problems of a given nationality; and granted finally that so wide a responsibility is assumed as that of attacking such an assumption as national deterioration in the light of local knowledge,—a question still arises as to the qualifications and training of persons who are to serve public and private agencies in the field of action of the immigrant. As to the personal qualifications of a worker with immigrants, certainly there should be no ray of prejudice. The worker who is so caught by the romance of difference as to see every immigrant problem in high lights is quite as much against the cause of the immigrant as the one who cannot shake off the shackles of Anglo-Saxon provincialism. In other words, the balanced, scientific mind that searches and waits is of importance: not, however, the scientific mind of the recluse but of the individual who lives with men.

Absolute science plays its part on the elemental plane; beyond are all those ranges of thought and association which make our civilization, the change of emphasis of which can only be known by close contact with people. If it be permitted to recognize temperament, a social worker with immigrants, more even than those in other fields, should have that intangible power of winning confidence and of rousing belief in self which breaks down all barriers and brings about understanding on the basis of human nature. This is especially important in the case of a worker whose race stock is different from the race stock of the community which is served.

This leads to a mooted point. Which will do the better, a person whose parentage reaches back far enough to be considered a real product of our country or one who, if not an Americanized immigrant, was born in this country of immigrant parents? If it were positively stated that only Italians should work among Italians, Bohemians among Bohemians, such a statement would be far afield. This error is made by certain societies organized on a racial basis. On the other hand, society after society in this country is crippled because the staff is made up of persons with no affiliations with

the racial groups among which they are working. The fact of the matter is that a member of a given race has certain marked advantages over a person not of that race. The ability to talk freely in a mutually understood language, appreciation of a common tradition, the understanding of racial or religious customs, are tremendously important and are of immediate advantage in the first days of confusion and inquiry when the immigrant arrives in this country. As soon as the immigrant has gained a footing, however, another consideration enters in and that is the obligation to bring the immigrant into such contact with Americans and American ways as will lead to an appreciation of the American outlook.

The history of the Slavs has made the Slav. The history back of America has made the American. It is incumbent upon us that we understand those who come from Europe. It is equally necessary that they appreciate the type of person born and bred here for generations and reared under our institutions. This is fair play and the faults of both in relation to our country can only be eradicated by mutual coöperative effort based on understanding; and this cannot be brought about at arm's length. Therefore, the person of American descent whose background of experience justifies the claim of understanding the alien, has a place on the staff of societies organized to assist the immigrant.

When residents of a locality take the attitude that no straight American should be engaged in their district, they are to be condemned as missing an opportunity, not only directly for themselves but also in the way of interpreting their contribution to that larger circle called the public on whom after all their welfare depends. The ideal combination of workers would include both persons who have immigrant ties and those who have not. Under no consideration should a person be made a secretary for the mere reason that it is thought advisable to have a representative of a certain racial group on the staff for that reason alone. Standards of efficiency have too often been let down when it was decided to appoint persons who are members of alien groups so that truly representative agents have not been chosen. The foreign-speaking agent should have inborn qualities of a high order and should serve an apprenticeship over a period of time long enough to know well the resources of a community. Certainly no novice should ever be plunged into an immigrant district. A secretary not of European parentage should not

only have a wide range of experience in case work but also the asset of long-term residence in a foreign colony in order to appreciate the norm of a race and also in order to know the special difficulties the immigrant meets with in this country. This subtle understanding does not come in one week or two.

The training of a case worker among immigrants should be concerned not only with the usual methods of social diagnosis and treatment but with the working of the institutions that have been organized particularly for immigrants. The operation of our laws should be studied and tested. What public officials can and cannot do should be known. No one should begin to do case work among immigrants who is not thoroughly familiar with the method by which aliens are admitted to this country and guided to their destinations; with the operation of the courts as they affect the immigrant; with the steps that lead to citizenship; with the employment offices as they serve in getting work. The weak and strong points of both public and private agencies must be known and a person should have become expert in using available resources or in supplementing the same before an appointment as an executive can be expected.

#### TYPES OF IMMIGRANT PROBLEMS

Compared with case work in the main, individual and family immigrant problems that an agency is called upon to face are not of the degenerative type. The immigrant gets into trouble and needs assistance most often because of a failure to understand American requirements or because of imperfect adaptation to our conditions. Of course, certain immigrants drink to excess. Of course, there are the shiftless among them as well as those who neglect their homes and those who fail to go forward. Sickness, too, plays its part in our case work for the immigrant. In general, however, it can be taken as a fair presumption that the needs of immigrants who apply for aid can be discovered with comparative ease and that the proportion of successful results to failures will be high. This statement should not for a moment be taken as inferring that our native stock presents more difficulties or difficulties of a kind that do not yield to ready solution, but it must be frankly admitted that those who are native bred will not go to a charity except as a last step.



On the other hand, the immigrant tends to turn to local agencies for assistance for no other reason than to be sure that the right track has been chosen. This is more and more true now that the races coming to us are finding us far different from themselves. The immigrant arrives with a humble trust in the helpful personal interest of Americans. Even police officers are often asked to decide upon the most intimate matters of family policy. In short, a worker among immigrants can take it for granted that an immigrant in entering an office has come for information or guidance as such, that there is no drag of personal weakness or broken ties of family or group to be faced in the majority of instances.

*An illustration.* A man out of work and physically run down had been working as an unskilled helper in a factory. Wages at the time he was interviewed were \$2.50 per day. He had been in the United States two years and said he had been a draftsman in Europe. The man was given a pencil and to the surprise of the agent drew the picture of a cottage in which he had lived in Italy and when asked how the rooms were arranged in the cottage, drew a floor plan. The man was asked if he was in need of money. He replied that he was not but he was greatly worried because he would be in a couple of weeks. He said he had heard that the agent could help him to get another position where his work would not be as hard.

*Action on the case.* An appointment was made with an Italian physician who reported that the man needed rest and that he was unstrung nervously because he did not like his work which had been too heavy for him. An architect was telephoned to. By a stroke of good fortune he said he would see the man.

*Result.* Eight (8) years from that date, the family was living in a suburban home which was being paid for through a coöperative bank.

It is to be noted in connection with this case that very few questions were asked. The record might be considered incomplete, yet certainly the art of a good case worker consists in knowing what not to ask quite as much as what to ask. With immigrants it is of prime importance that their confidence be won. Great care should be taken not to cause self-consciousness through too close an inquiry into personal affairs. Many an immigrant has been turned aside by too incisive a method on the part of case workers, and the uncoöperative attitude of immigrants who have been in this country for a time is undoubtedly due to prejudice engendered by the lack of appreciation by an agent of the need of care in a first approach. It would be a fair guess to state that societies in which immigrant needs factor largely, will testify that 90 per cent of their cases will revolve around such matters as advice regarding where work can be

found, or better jobs obtained; questions as to our savings institutions; problems involving their own desire to learn English and to educate their children; matters concerned with sending for relatives or getting in touch with members of their families who are supposed to have arrived in this country or are expected; questions in regard to becoming citizens and matters which concern medical care. Immigrants need to be told where to go for work and to be put in touch with the leaders of their race who can be trusted. They need to be directed to public agencies that will assist them, such as immigration bureaus, night schools and recreation centers, and the skill with which this is accomplished means everything for the future of those who come to us. Every inquiry carries with it the responsibility of so answering that the immigrant leaves with a clear understanding of the matter in which he is interested and feeling encouraged to return if again puzzled.

Enough has been said to make the point that in immigrant case work more frequently than not the problem is one of putting persons in touch with resources that are unknown to them. The immigrant comes to us strong, eager, ambitious. Give him a chance and he will do the rest. Difficult personal idiosyncrasies do not play a large part in case work with the alien nor does family discord. Would that the same were true of the second generation!

#### THE SECOND GENERATION OF IMMIGRANTS

Our contact with the immigrant straight from the old country convinces us that he is seldom unable to care for himself. His children, however, are found on our relief lists and in the ranks of the unemployed to too large an extent. No fair-minded person can lay this fact to anything other than our own American neglect. Two lines of effort open up here for the case worker.

First: a far more refined fitting of individual ability to opportunity than has been carried out and a more drastic attack on certain environmental conditions which weigh heavily upon the immigrant. At present the immigrant is fed into industry as nothing more than a unit of man power. The time is approaching when the government employment agency will use the vocational method of considering special aptitudes for particular jobs. Immigration brings in a mass of unskilled labor, it is true, but there have been hundreds of instances of men whose skill as machinists or craftsmen

has been wasted because they have not known where to go for guidance or because an employment agency has not taken the pains to consider anything but the fact that a man needed work and that any job would do.

Not only are the government employment agencies moving on toward the point of greater care in classifying workers, but industry itself is concentrating on lessening the labor turnover and is engaging persons to test out special ability.

Further, considering the European environment from which certain of our immigrant groups come, it is essential that we get those with an agricultural bent out on to the land. Although some gain has been made in this matter of distribution during the past few years, we have only begun to attack the problem so that the case worker with immigrants will find a fertile field in this direction for individual suggestion and individual encouragement.

Case work records of an agency tell their own story of difficulty. They present the effects of heredity, the overpowering result of disorganized family life and the insuperable difficulties of environmental conditions. With the immigrant we find not so much difficulties of heredity as lowered family unity. We find bad housing, the evils of congested areas and industrial exploitation playing their part in breaking down the natural mental power, moral rectitude and physical tone of the immigrant. Since this is true, efforts to assist individuals stand indicted unless, coupled with these, case workers use every means for attacking environmental handicaps.

A native of this country is often not in close enough touch with European family standards to realize fully how very important it is to go back continually to the family relationship in given individual difficulties or in thinking out a plan of action for a boy or girl, man or woman. Two extremes are often faced in immigrant situations: the instances where persons have no relatives in this country and so are free from all family restraints, and the instances where family dominance is so strong as completely to submerge the individual and create an almost insuperable obstacle to necessary freedom of action.

The case worker should work sympathetically with the latter situation, remembering how important a part the family has played in the history of certain foreign races and in a negative way reasoning back from forms of anti-social traits which, particularly in

young people, develop because parental respect and the ideal of the home circle has broken down. The family ceremonial should be honored and interpreted to our young foreign citizens in its American setting.

#### IMPORTANT FACTORS IN THE PROBLEM

It is never safe in any form of problem not to reason from the physical, mental and the moral responsibilities of a person back to assets or defects in family situations as well as to consider the helps or handicaps that may spring from association. With the immigrant the surrounding groups of which he is one are all important. Custom has at once a binding effect which may need to be modified and at the same time a protective influence that must be brought to bear on many a situation, and in this regard no two nations are alike. There is all the variation of temperamental reactions as well as traditional code. A case worker is treading on dangerous ground unless these distinctions are recognized.

With a person who has no family ties, the building up of acquaintanceships among those who have enough at stake in a neighborhood to be acted upon by public opinion cannot be brought about too quickly. It is more and more coming to be accepted that the judgment of one's peers acts as a centripetal force in holding one up to accepted standards of thought and action. When persons are free from the obligations of family and are outside the pale of the effect of community requirements, a decidedly unnatural situation is created. Example after example could be given where the building up of community ties has swung persons from danger into resistant self-assertion.

By way of summary we may say that aside from the usual identifying data of the name, address, et cetera, which need not be detailed here, it is essential not only to get the country from which a person comes but also the section of the country. Occupational circumstances should be gone into carefully since in many parts of Europe lines of work may be similar to lines of work here and yet vary greatly as to the technical requirements and the conditions under which labor is carried on.

Moreover, it is not always safe to assume that an immigrant is uneducated, in its broadest meaning, even though he may have had little schooling. In certain sections, the folk organizations of the

people have for many years been such as to develop a depth of thought and a sort of philosophy, to say nothing of a practical kind of reasoning. Only a limited training in symbols of languages is needed to remove such a person far from the illiterate group. It must be remembered, too, that the importance of the church varies markedly in certain parts of Europe.

One of the most important considerations is getting at the reason why the person came to this country. These factors are extremely important in helping to bring out the right kind of assets in a case of need or to make possible connections with persons who would be willing to extend the advantages of good fellowship to a stranger or to connect a person with any of our organized forces of civic or social life.

In facing any given problem one reasons first in terms of the power of the individual. What has he within himself? What has been given him by nature? What has been added by training? What does he possess in the way of experience and how does he fit into his circle of associates? Then, what is there in the family situation which will push him forward or draw him back? What does the community offer in the way of giving play to the possibilities made apparent by these two lines of deduction?

## THE SOLDIERS' AND SAILORS' FAMILIES

BY W. FRANK PERSONS,

Director General of Civilian Relief, the American Red Cross.

Although in the very nature of the case, soldiers and sailors are separated from their families, the Home Service of the American Red Cross reaches both the men, wherever they may be, and their loved ones at home. It is at once the means of sustaining the spirits of our fighting men and of preserving the welfare of their families. It is a tie that binds them together. Men may be the best soldiers in the world, but if things are not well with their families at home they lose efficiency through worry, and the morale of the army—that all-important factor—begins to fail.

So it is the patriotic duty as well as the humanitarian opportunity of Home Service workers of the American Red Cross to care for the lonely families of our fighting men. They *must* be encouraged to "carry on" without faltering. Their families must not be allowed to bear personal privation and so to double the willing sacrifices they have made. Every report from the training camps and from the French front mentions the excellent spirit of our troops. Will they maintain this morale while thousands of miles from home, through trench-life and battle, to the victorious end? The answer will be determined largely by the Home Service of the Red Cross, which must be the nation's assurance that no enlisted man's family will suffer for any essential thing that lies within its power to give.

There are representatives of the Home Service of the Red Cross in every training camp for soldiers and sailors in this country; they are with our troops in France; and their offer of help is on the bulletin-board of every ship of the Navy. They invite the confidence of the men, and win and deserve it. They learn of the anxieties of the enlisted men and of needs in their homes. Such messages are then promptly sent to the Home Service Sections of the Red Cross Chapters and their families are visited and helped. Then the encouraging news goes back to the husband or brother. He also is helped. That result is not hidden from those on this side the trenches. Daily letters are received like the following:

CAMP ———

December 10, 1917.

*To the American Red Cross:*

I wish to extend my sincere thanks to you for going to aid my wife and child whom I asked you to help last week. My wife wrote me that you came to see her. I highly appreciate that. *I can soldier better now.*

Yours sincerely,

\_\_\_\_\_

No argument is necessary to show that Home Service must give the assurance that the soldier and sailor must have, if he is to do his best,—the assurance that in trouble or misfortune the Red Cross will do what *he* would do if he were at home instead of at the front or on the sea.

The Home Service of the Red Cross may assist, through morale, to shorten the conflict and so to lessen the consequences of battle, but it may do even more to save the social consequences of war at home. It may protect the homes left lonely and unprepared for emergencies; bring comfort and cheer to the homes left in anxiety and privation; safeguard the health of women and children; uphold the standards of child care, of working conditions and of recreation and education. So far as is humanly possible it may help to maintain the essential standards of home life, so that when the soldiers and sailors return from the war, their families shall be found ready to help and to encourage them to honor further the country which they have so nobly served. Nothing less than this will measure up to American ideals, and on these ideals the Red Cross has founded its conception and its plans for Home Service.

#### OPPORTUNITIES OF HOME SERVICE

Home Service is not relief in the sense of money payments or doles of food or clothing, though such assistance may be necessary even to the families of soldiers and sailors. The enactment of the War Risk Insurance Law, heartily advocated by the Red Cross, has placed the responsibility for financial aid in large measure upon the government, where it justly belongs. The provisions of that act make liberal money allowances to the families of men in the armed service. These allowances do not diminish but rather multiply the opportunities for usefulness of Home Service, though these were manifold before allowances were granted. Home Service is now able to turn its full power upon its own real task.



The greatest opportunity of Home Service lies in conserving human resources in the families left behind. The majority of these families are in position to maintain good standards of health, education, industry, and family solidarity without recourse to outside help of any kind. A considerable minority, on the other hand, find their powers of self-helpfulness strained to the breaking point by lack of opportunity, by ill health, or by the sudden changes in their way of living brought about directly by war conditions. In no instance must the standards and ideals of home life be lowered. The social consequences of war must be anticipated and all tendency to deterioration must be checked.

The second opportunity for Home Service, for which the government in the very nature of things cannot make provision, is relief in emergencies, such as temporary financial aid while legal claims are being adjusted, or while the receipt of a government allowance is delayed. The chief requirement here is promptness. This kind of service has not been a heavy burden, although the Red Cross Home Service undertook it during the first seven months of the war when there were no government allowances. In every instance Home Service is careful to continue its relations of confidence and friendship with the families it has aided in this way and to conserve the welfare of these families in every possible manner.

The third opportunity, like the first, will be not only a continuing but an increasing one. It is the giving of regular allowances, when needed, to those who have no legal claim to the federal allowances, but a moral claim to Red Cross interest, owing to the fact that they have been accustomed to depend upon men now in the service. Another large group, who have no legal claim on the United States government but who have been formally accepted by the Red Cross as a special responsibility, are the families resident in the United States of men who are in the armies or navies of our allies. This is no small matter. On Manhattan Island there are many hundreds of these families receiving Home Service. It is the aim of Home Service to discharge scrupulously in each community this duty to the families whose men are fighting side by side with our own.

The fourth opportunity for Home Service will increase in importance with each month that our forces are engaged in actual warfare. It relates to the returning soldier or sailor, more especially when he returns disabled. Whatever can be done through special-

ized hospital and institutional treatment will be done by the government, supplemented so far as may be appropriate by the Red Cross and by other agencies. The supremely important thing is the prevention of permanent disability. In this, many forces must co-operate. In so far as these forces are local, Home Service will have to carry forward the work begun in government hospitals and training shops. The non-institutional side, the readjustment to actual home conditions, the fitting of men back into industry after discharge, the interesting of individual employers, the organizing of local resources for further training, and the development of a helpful and stimulating attitude towards these men throughout the whole community,—these are recognized as definite Home Service tasks. It is not merely a just, humanitarian service to individuals, but also a duty to the country, to put forth every effort to conserve the energies of partially disabled soldiers and sailors, and to readjust them to civilian and industrial life.

The fifth opportunity for Home Service lies in the desire of relatives of enlisted men for information of many kinds. Already this service is widely extended through Home Service advising how mail should be addressed to soldiers and sailors; how information may be obtained concerning those sick, wounded, or missing; what the War Risk Insurance Law means and how to take advantage of its provisions. This work is being constantly extended and is saving untold anxiety and suffering. It will serve furthermore in a very substantial way to maintain the comfort and health of those families who have given their breadwinners and protectors to the service of their country.

Finally, a sixth opportunity for Home Service is to help families to keep pace, in ambition and achievement, with the man who is surrounded, often, with new chances for education and advancement. The growing importance of this work is realized by Home Service workers. Men who have had but limited opportunities in life are suddenly obliged to travel, to accept mental discipline as well as military discipline, and to associate with men such as they have never met before in close contact. And they are advancing. For example, one Home Service Section is now caring for the large family of a naturalized citizen who voluntarily enlisted as a private but who is already top sergeant. He has made good in remarkable fashion. If he should return home to find his family in the same

forbidding home life in which he left them, he would most surely be disheartened and discouraged. So the Home Service worker has moved the family to pleasant comfortable quarters. The wife and children have now the recreation and advantages which will insure a home life worthy of this soldier's ideals when he comes back.

#### ORGANIZATION

Concerning the organization of the Red Cross for Home Service, perhaps it is sufficient to say that the work is organized in each locality as a separate, distinct activity of the local Red Cross Chapter. As a part of the Civilian Relief Committee of the Chapter, there is constituted a Home Service Section whose membership is as representative as possible of various local interests—business, professional, church and social work. The Home Service Section is responsible to the officers of the Chapter for the proper conduct of its work in behalf of the families under its care. It decides matters of policy as to its own work; prepares and submits the budget required for carrying on its activity; employs the clerical and visiting staff; enlists its volunteers; organizes its office system and makes its own required reports to the Chapter and to the Department of Civilian Relief. Where the work is considerable, a Consultation Committee is appointed which includes persons engaged locally in public health work and social service, and others with special experience and knowledge of local social conditions. If possible there is also appointed someone familiar with the military and naval affairs, who can advise the Section concerning proper procedure in such matters. There is also usually appointed a lawyer who can instruct the Home Service workers about municipal and state laws. The principal function of the Consultation Committee is to consider difficult problems which arise in the course of work with individual families. It is designed to facilitate coöperation between the Red Cross and the agencies and persons regularly engaged in family work.

Each Home Service Section draws its budget from the funds of its Chapter, raised locally, the responsibility for raising funds for Home Service resting with the Finance Committee of the Chapter. There is the minimum of red tape and formality, the minimum of control so far as the Department of Civilian Relief in Washington is concerned.

It is the purpose of the Red Cross Home Service that each Chapter shall have such a Home Service Section, no matter how few men may have entered the service from its territory and no matter how self-sufficient their families may appear to be. By no other means can the responsibility for Home Service be fixed. The Home Service Section in each community is much more apt to have the coöperation of local social agencies, and to enlist the initiative, the cordial spirit, and the sympathy in fullest measure of the neighbors and friends of soldiers' and sailors' families, if the responsibility for organization and direction of this work remains in local hands. Without a group charged with this responsibility for Home Service, there will be soldiers' children dropping out of school or deprived of timely medical treatment; there will be soldiers' wives wheedled out of their income by shrewd agents or cheated out of it by fakers; and there will be soldiers' homes broken up during their absence by misfortune of one kind or another which the strong will and informed mind of a friend at hand might have overcome. Ten families have just as much right to Home Service as have one hundred families. It is not the volume but the character of the work that counts.

#### HOW HOME SERVICE LEARNS WHERE HELP IS NEEDED

Home Service endeavors to be very careful about the method of approach to these families. It is not intended or permitted that all families of soldiers and sailors shall be called upon, and asked if they require assistance. No home is to be visited in the name of Home Service without a definite invitation from the family or from some responsible person competent to speak for them. Home Service has no desire to intrude or to expose people to comment. For this reason, the wearing of a special costume by Home Service workers has been discouraged; for this reason also, unconfirmed, anonymous requests to visit families are ignored, though each such request is made a matter of record. It is purposed that the work of the Home Service Section be so well understood, and its work so natural and neighborly, that those who need help of any kind will be drawn to avail themselves of it. There are many ways, of course, in which the Home Service worker may come into contact with these families.

At every camp and cantonment the Home Service Director,

who everywhere enjoys the fullest support and approval of the military authorities, takes every means to let the men know of this phase of Red Cross work. Sailors on every vessel of the Navy get the message. Many requests come from soldiers and sailors through such publicity. Through publicity in the local press, and through their friends, Home Service comes to the attention of other members of the soldier's or sailor's family who may ask help for the wife or the mother of the household. These have been very frequent means of approach to those who have needed assistance.

Home Service Sections learn of emergencies in families, and find ways of offering help, in the natural course of fulfilling the Information Service which has proved to be one of its great opportunities. Helpful relations have been established with families in which there were children, by securing the assistance of school teachers to whom the aims and the scope of Home Service are being everywhere explained, not by general circularizing but in quieter ways which have resulted in mutual understanding and the securing of prompt information about children who are wayward or sick or neglected, or withdrawn from school prematurely because of the war service of a father or other near relative.

Again, the various religious and social organizations of the community have many contacts with the families. To these agencies the Red Cross has given full information about the work of Home Service. This is not done by formal approach through circular or advertisement but by personal contact and association and by drawing into the Home Service Sections, as members, representatives of these social agencies and religious societies. Home Service Sections have established friendly relationships with the various state and local Councils of Defense, who notify them promptly of homes where Home Service is required. Finally, Home Service Sections have established contacts with Exemption Boards, and have in many instances learned thereby of the needs of families of drafted men.

### HOW HOME SERVICE IS GIVEN

Home Service has demonstrated its ability to conserve human resources in thousands of homes by helping to maintain there good standards of child care, of physical and mental health, of education, and of working conditions. In some communities these standards

have been achieved only after long toil. Home Service is helping to maintain them.

Living is more difficult for everyone in war times, and the first thing a Home Service visitor comes to understand in trying to conserve the welfare of children, is that their mothers are, beyond everything, often lonely and discouraged. Whatever will give the mothers courage to "carry on" helps the children. From many different parts of the country comes the story of women whose outlook is suddenly darkened, whose need is for sympathetic understanding of their plight, for the development of new interests and cheerful companionship. Some are facing the birth of a first child alone; some have displayed symptoms of mental depression that require the promptest attention and, in a few cases, hospital care. The absence of the man deprives the family of the interest which he brings home with him from the world of trade and industry. This lack and loss of companionship must, so far as possible, be replaced. Various forms of recreation, including clubs and classes, become, therefore, very important for the mother as well as for the children.

The chairman of a Home Service Section reports one instance in which discouragement led a mother to write to the department of soldiers' aid in her state, asking her husband's release from the army; her three boys, she stated, were so unruly that she could do nothing with them. A Home Service visitor, asked to report upon this request, found the family in no financial difficulty, but the mother so worried that she lacked the mental energy to cope with three little lads all of whom were full of life and high spirits. The visitor's first suggestion was a vacation for the mother and a temporary housekeeper for her children. But the boys would have none of this, protesting that they wanted their own mother and no one else. This new attitude upon their part gave no small degree of comfort to the discouraged woman. She began to enter into the recreational plans for the children, which were proposed and carried out by the visitor, but seemed to respond most of all to the chance to talk over personal affairs at frequent intervals with someone who was really interested in them.

The health of young children is a matter of constant concern on the part of the Home Service worker who is urged to consult the physician advising the Section about the obvious indications of

malnutrition, adenoids, and other frequent ailments of infants. Speaking generally, any sign of debilitation, such as persistent cold, cough, loss of weight and appetite, mouth breathing and pallor prompts the visitor to urge the parent that medical advice be secured.

All available resources for the health-care of the school child are brought to bear when at all needed. Home Service workers make full use of the services of the infant welfare nurse, the school nurse, and the tuberculosis nurse, and of any visiting nurse or public health nurse in the community. Such nurses are sometimes asked to advise about dietaries and food economics as well as concerning matters of health.

A representative of the national Children's Bureau says that the chief measure for protecting babies is to insure their care and nursing by healthy mothers in their own homes. Helping mothers to plan their affairs so as to remain at home most of the time while the children are small is a health measure for both mother and child, though a woman's temperament and her standard of home care before the enlistment of the breadwinner should be taken into consideration.

Faithful school attendance is often assured by arranging, when necessary, for regular reports from teachers. When the age for leaving school approaches—in fact, long before it has arrived—Home Service seeks the best vocational guidance obtainable for the boy or girl. Its workers discourage entrance into occupations in which there is no future, no skill to be acquired, no good chance of advancement, or in which the processes menace health.

Problems of boys and girls in their early teens—in the years of adolescence—often require the wisest advice available from teachers, club leaders, and from others experienced in child helping.

Sometimes the mother is unable to manage the family affairs as she should. She may even be the victim of a bad habit. Then it is important that the allotment of pay and the family allowance be expended by someone else who will administer it for her and her children's best welfare. Soldiers and sailors have had to appeal to Home Service Sections in such situations, the solution requiring court intervention in some cases and in others not.

Another difficult situation is that of the father whose wife has died. A widower, drafted into the army, appealed to the Home



Service Section in his city to arrange for proper care for his one child. This was done with the help of a child-placing agency, and the child's board being paid by the father through the Home Service Section.

The question has been asked whether unmarried women who are the mothers of soldiers' children come within the scope of Home Service. Such mothers do, and so do their children. The legal rights of both mother and child should be known. In handling such cases, a denial by the man must be investigated, remembering, however, the possibility of blackmail and so being very careful to deal fairly with both man and woman on the basis of all the facts obtainable, and with the competent advice and service of a good lawyer of sympathetic mind who should be a member of each Home Service Section.

Many people become so accustomed to a low health standard that they actually regard ill-health as a normal thing. Home Service visitors try to accustom families to a higher standard, and to attend to dental defects, eye defects, nose and throat defects in time, bringing them promptly to the notice of the proper medical and dental specialists.

It is necessary, in particular, to guard against an increase of tuberculosis. The experience of foreign countries, especially of France, in this war, indicates the possible rapid spread of this disease. Accordingly, especial attention is directed (1) to any loss of weight in members of the families visited, (2) to a persistent cold or cough, (3) to fever or loss of appetite. Suspected cases are referred to a doctor or to the local tuberculosis dispensary. "In families where we have found a *history* of tuberculosis in the past," writes the secretary of one Home Service Section, "we have had examinations made and have been able to give treatment to patients who had not known they required a physician's care."

Here is an extract from the notes of one Home Service visitor.

We were asked to furnish crutches in this family for the lame boy of thirteen. He lives with his father, mother and five brothers and sisters, of whom the oldest boy has enlisted. I found all the others in bad physical condition owing to a combination of insufficient income, poor management, and lack of knowledge of food values, so I took every one of them to a dispensary, where they were examined by specialists. Two doctors examined the boy who "needed crutches." With the consent of his parents and his priest, he was operated upon with satisfactory results. I am teaching the mother how and what to cook. There is an astonishing physical improvement in every member of the family.

Mention has been made of the importance of keeping children in school and assuring regular attendance there, but Home Service Sections are doing more than this. Children who had been removed and put to work to meet a shrinkage in the family income are being returned to school promptly, as soon as Home Service is called in. One Home Service Section reports a boy, found to be working illegally nearly fourteen hours a day, who has been returned to school. This Section is making special provision to keep children between the ages of fourteen and sixteen in classes where they will receive a good preparation for earning their living later. Another is taking children out of "blind alley" occupations and providing special aid to give them training for better work. Another reports upon a wayward boy who has been introduced to the Boy Scouts and is now doing well in school. Still another made it possible for a young man to complete his last year in college by paying the necessary tuition after his father entered the national army. One member of a Home Service Section is getting a great deal of pleasure out of giving free music lessons to three children whose father has died.

Unless we are able to learn by the mistakes of Great Britain in the earlier years of her present struggle—mistakes which she recognizes now—we shall be confronted with attempts to speed up industry at the expense of the health and strength of the workers. The strict administration of the laws now on our statute books for the protection of workers against long hours and unwholesome processes is placed upon the conscience of those engaged in Home Service.

First of all, the Home Service worker is expected to know what the national, state, and local provisions are—not only the laws regulating working conditions, but the agencies and officials responsible for their enforcement. What provisions are there about maximum hours? What is a standard working day for men, for women, for children of working age? Is one day's rest in seven provided for by law? Is night work prohibited for women? For children? What hazardous employments are prohibited for either or both? Children who work are required to have employment certificates in almost all of our states. Have these been issued legally? Women need special protection from overwork before and after childbirth. Lawyers interested in Home Service are

asked to advise about the laws applicable to these matters. By order of the Quartermaster-General of the Army, uniforms for soldiers cannot be worked upon in any tenement house or dwelling. Home Service workers give valuable help in the enforcement of the order by making it known to the families with which they have to deal.

Home Service Sections are systematically avoiding the practice of thrusting women into industry who can serve the family better at home. Before family allowances made earning outside the home less necessary, they were assuming extra financial burdens cheerfully in order to keep mothers with their children and this is important to safeguard home life on this side.

The Red Cross believes that it owes consideration to the agencies in each locality which are carrying permanently the responsibility for social service. At its annual meeting in December, 1917, the Red Cross adopted a resolution which in substance is as follows: That while the Red Cross needs and must use immense sums of money for unusual purposes, it does not wish to receive that money at the expense of the permanent social work of this country but desires that the support of the Red Cross shall be in addition to that work. The Red Cross believes that the work of the local social agencies in each community must continue during the war, not only with full vigor, but with increased resources, in order to meet needs that are becoming greater; and the Red Cross holds that these local agencies must be ready to do their full part in social reconstruction when the war is over. It is the purpose of the Red Cross that the awakening sense of social responsibility shall be utilized by the agencies which are permanent and necessary, and that these organizations shall increase in membership and resources during the war, as their needs may require. The desire of the Red Cross, especially in its work of Home Service, is that everywhere there be the most cordial coöperation.

#### TRAINING OF HOME SERVICE WORKERS

Successful Home Service work depends, indeed, not so much upon the extensiveness of the knowledge and experience of those relatively few persons who will be actively engaged in it, as upon their ability to utilize the knowledge and experience of others. They levy a claim upon the expertness of the whole community to which

the possessors of special knowledge and skill have been only too glad to respond with enthusiasm, once it has been made clear that the Red Cross intends to do its fair share and that it makes good that intention.

In order that there may be a larger number of trained and competent executives for Home Service Sections, the Department of Civilian Relief has established at twenty-five strategic centers, representing every section of the country, Home Service Institutes. The Institutes are open to executives and members of Home Service Sections, and to other qualified volunteers. The courses of the Institutes require the full time of those who attend for a period of six weeks. The programs of all the Institutes are practically the same. They are prescribed by the Red Cross and are given under its auspices. The course includes four hours of lectures and discussion each week, required readings, and the balance of the time—about twenty-five hours each week—is spent in supervised practical field work in the Home Service of the Chapter in whose city the Institute is held and in the local societies that do similar work. The membership of each Institute is limited to twenty-five, in order to assure adequate personal attention in classroom discussion and in the field work. A certificate is granted by the Red Cross to those who complete the work with credit and, in the field work, show qualities fitting them to assume responsibility in Home Service and aptitude for it. Wherever possible, the Institute is affiliated with a well-established University, College, or Training School for social work.

For those unable to attend the Institutes, Chapter Courses are held in those cities where competent instruction and field work are available. These courses conform to a general standard prescribed and published by the Red Cross, but which may readily be adapted to local conditions and needs. Chapter Courses are always related intimately to the work of the local Chapters. Many Chapters have conducted such courses and many more are planning to do so. The Red Cross strongly endorses the organization of such courses and believes that the volunteers connected with Home Service Sections will work longer and do more if they are given such training. The eager response which has been made to the Chapter Courses and to the Institutes proves that people no longer feel that

good intentions are qualifications enough for Home Service. They want to learn how to do this work in the best possible way.

Those who have taken up Home Service have been quick to see that it requires a familiarity with new problems and a facility in dealing with them which can be acquired only through training. To be sure, the Home Service Institute, to say nothing of the Chapter Course, does not make social workers, but it does make informed people in the communities from which the students come. In short, the Red Cross, realizing its responsibility and its opportunity, is trying to fit itself to discharge that responsibility by beginning at the obvious point of departure—through a campaign of education. It is the earnest hope of the Red Cross, as it is the test of its standards, that through Home Service in coöperation with other agencies, the family of no soldier or sailor shall suffer a lowering of its standards nor lack any essential thing within the power of the nation to give. Home Service is solicitous about the welfare of the families of men in the service because it realizes that upon the success achieved in this task depends the kind of problems that will confront the nation when the war is over. It is the hope of the Red Cross that its Home Service may help to awaken a national spirit of social responsibility so that when the war is ended, America shall have not a new social problem, but instead a new and greater social force in working out its destinies.

## BOOK DEPARTMENT

### THE BUSINESS MAN'S LIBRARY

#### BANKING INVESTMENTS AND FINANCE

KEMMERER, EDWIN W. *Postal Savings: an Historical and Critical Study of the Postal Savings Bank System of the United States.* Pp. viii, 176. Price, \$1.25. Princeton: Princeton University Press, 1917.

This book is timely for all who are interested in the thrift campaign. The subject matter is only indirectly related to Liberty Loan Bonds and War Savings Certificates, but facts of importance to any one concerned in the development of the thrift habit are set forth; for example, the facts underlying the establishment of the postal savings system, the classes of a community from whom these deposits—the result of saving—come, the circumstances affecting the increase or decrease of deposits, and the sections of the country in which the postal savings habit is most strongly entrenched. From the angle of thrift, this work is important principally for its clear presentation of suggestive facts, rather than for any deliberate conclusions predicated upon the facts.

There are pages of significance to the banker also. The book is undoubtedly one of the most lucid expositions of the practical operations of our postal savings system that has been published. Some of the tables might be of a more recent date in order to be truly representative of the condition and development of the system during the war period, although lack of such figures is probably to be attributed to inadequate statistical sources.

The author has attempted to give a balanced view of the postal savings system. As a consequence, he gives both viewpoints on any matter that has evoked discussion prior either to its incorporation or rejection as a part of the postal savings system. In style the work is expository and narrative, and is not an exhaustive critical analysis. The appendices include the original act and the subsequent amendments thereto of the United States and the Philippines systems.

FRANK PARKER.

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#### INDUSTRIAL MANAGEMENT

LEFFINGWELL, W. H. *Scientific Office Management.* Pp. 253. Price, \$10.00. Chicago: A. W. Shaw Company, 1917.

Books on scientific management fall into two classes, one descriptive, the other philosophic. The first deals with practices, the second with principles. The number of books describing practices is legion; for example, a published bibliography is thirty-eight pages long, each page crowded with titles. There is little reason, therefore, for adding to works in this category, yet Leffingwell has done just that thing, and deserves commendation for it. The paradox is explicable when it is stated that the host of books deals with scientific management in fac-

torics whereas Leffingwell goes into an entirely new field and shows the operation of the Taylor System in offices. There is only one other good book dealing with office management, consequently there is a real need for volumes such as Leffingwell has given us.

His work adds nothing new to the principles of management. He takes the Taylor System with its standardization, time and motion study, tasks and bonus schemes, and employment management, and applies it to office work.

As a whole, the book is suggestive; it gives a large number of hints to office managers that ought to prove valuable. It is well illustrated by photographs, but the charts fall into the error that is typical of all Shaw publications; namely, the originals are drawn on such a large scale that when reduced in reproduction the printing is well nigh undecipherable.

M. K.

#### STATISTICS

SECRIST, HORACE. *An Introduction to Statistical Methods*. Pp. xxi, 482. Price, \$2.00. New York: The Macmillan Company, 1917.

BAILEY, WM. B. and CUMMINGS, JOHN. *Statistics*. Pp. 153. Price, 60 cents. Chicago: A. C. McClurg and Company, 1917.

These two volumes, covering virtually the same field but written with entirely different purposes, must be judged by different standards. Professor Secrist has aimed to present a comprehensive but not too technical text primarily for the use of college students and business men, while Professors Bailey and Cummings have tried to produce a suggestive manual principally for social workers. The former must not be expected to sacrifice explicitness and detail for facile reading, nor the latter to abandon emphasis of prominent principles for minute and technical description.

Secrist's volume may be roughly divided into three parts, dealing respectively with the uses and collection of statistics, their presentation and some mathematical devices for statistical study. The second and third portions are superior in treatment to the first, the author seemingly experiencing the usual difficulty in securing a satisfactory method of dealing with the subject of collection. It is submitted that no presentation which divorces principles and illustrations will ever be satisfactory, difficult as it may be to combine the two without obscuring the main ideas. Nevertheless even this section of the book is superior to other descriptions of the process and its principles. The space available in the Bailey and Cummings book precludes any adequate treatment of this phase of the subject. On the other hand, this latter volume contains an important chapter on Ratios which points out many common errors in the use of statistics, especially vital and sociological. The suggestive criticisms contained therein must ordinarily be gathered by the laborious study of general principles, which often means that they are unnoted or disregarded.

Secrist's book is especially to be commended in two respects; its emphasis on the application of statistical principles to business uses, a field in which a text has been urgently needed and the stress laid upon *purpose* as a predominant influence in collection, tabulation, averaging and graphic representation. Th



chapters on statistical units, averages and graphs are especially noteworthy in these respects, although minor criticisms may be made in individual instances. Thus the chapter on units might have somewhat considered the classification by Watkins as well as the author's classification as to collection and presentation; some paragraphs such as the last on page 223 are not readily comprehensible by the student; and it is difficult to see why the author commends the diagram on page 174 which is certainly not notable for facility of interpretation or adherence to certain principles elsewhere stated.

Considerable space might be used in extolling the advantages of Secrist's volume as a text, in which respect it is clearly superior to any now extant especially from the standpoint of commercial education. The chapters on tabulation, graphs, averages and index numbers are excellent, and the somewhat unusual method of treating graphic presentation in advance of averages appears to be an improvement upon custom. The description of graphics seems to suffer little by preceding the subject of averages, while the best explanation of averages without pictorial aid is usually deficient. Bailey and Cummings follow in this the usual procedure, but since diagrams are not frequent in their book this is of little consequence. Professor Secrist might, however, with some advantage have incorporated as an introduction to his chapters on graphs Professor Bailey's classification of diagrams, which has long been regarded as very satisfactory for teaching purposes. The former's discussion of index numbers is, as he frankly admits, largely based on Professor Mitchell's admirable study for the Bureau of Labor Statistics. Except in tabular and graphic illustration Secrist's chapters on discussion, skewness and correlation appear little superior to Professor King's text. The author gains considerably, however, here as well as elsewhere, by liberality in illustrative material.

The portion of Bailey and Cummings' book dealing with averages is necessarily deficient by reason of limited space but it is useless to criticize a treatment which is thus arbitrarily limited. Little complaint can be made of the apportionment of the space among the various subjects but Chapters I and II appear unnecessarily restricted. The chapter on graphs is a version of Professor Bailey's earlier classification in *Modern Social Conditions* and necessarily suffers, as must any treatment, from lack of illustration. The chapter on correlation is brief but suggestive.

In conclusion it may be said that these volumes fulfil admirably the purposes intended. Secrist's book is at present undoubtedly the best available text, strong in the emphasis of the purpose of statistics, ample illustrative material and the application of statistical principles to business uses. Bailey and Cummings have written a suggestive manual and brief introduction to the subject particularly for those interested in social and vital studies, valuable because of simplicity and brevity.

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## MISCELLANEOUS

WICKWARE, FRANCIS G. (Ed. by). *The American Year Book, 1917.* Pp. xx, 822. Price, \$3.00. New York: D. Appleton and Company, 1918.

"A record of events and progress for 1917" is extremely welcome. The war has had its influence on every activity, and while the new edition follows the general plan of the Year Book, it has been found necessary to curtail some portions in order to include data on the war itself and foreign matters heretofore very briefly discussed.

References throughout to former issues of the Year Book and cross references, together with a very complete index, enhance the value to anyone desirous of making a continuous study of a special subject.

## ECONOMICS

BULLOCK, EDNA D. (compiled by). *Selected Articles on Single Tax.* (Second edition, rev. and enlgd.) Pp. vii, 249.

PHELPS, EDITH M. (compiled by). *Selected Articles on the Income Tax.* (Third and enlgd ed.) Pp. xxxiii, 235. Price, \$1.25 each. New York: The H. W. Wilson Company, 1917.

These two books are in the Debaters' Handbook series, and are prepared in the usual form. They contain bibliographies with brief comment on content or point of view. The bibliographies would be more valuable if the comments were more extensive and more to the point. The excerpts in the volume on Income Tax are primarily from the accessible magazine sources and are not so representative or as well chosen as are the selections in the volume on the Single Tax.

C. L. K.

HOBSON, J. A. *Democracy after the War.* Pp. 215. Price, \$1.25. New York: The Macmillan Company, 1917.

To Mr. Hobson the important contest after the war will be that of democracy against its enemies. There is an undoubted "antagonism between war and the exercise of those personal and political liberties comprised in democracy." To him there is a close and inevitable association between war, militarism, capitalism, profiteering, protectionism, colonialism, imperialism, junkerdom,—in short our entire industrial system in all of its leading aspects. Many influences in the fields of theory and of experiment are to be observed. In Germany, the idea of "the absolute and forceful State, animated by a will for power" illustrates the way in which a political theory has been utilized to shape both thought and conduct in conservative mold. In Great Britain the "classical political economy" with its *laissez-faire* assumptions, its marginal theory of value and its productivity theory of labor has likewise given support to capitalism. Spiritual and social forces, working through the church, the schools and the press are also involved in an alliance against progress not plainly recognized but none the less real. The older theories may go but a new group may be expected to support the motives of those who hope "to purchase enlarged productivity and improved discipline from labour with a small portion of the increased yield of wealth."

It is probable that the State will "endeavor to retain after the war many of the emergency powers it has acquired during the war." In some directions, particularly in the field of taxation, an extension of powers will come and the capitalist group will endeavor "to put high protection on the country under the guise of national security, imperial unity, punishment of Germany and maintenance of the Alliance." Moreover, they will try "to shift on to 'the masses' a large proportion of the burden of taxation." What they want is "protection and high productivity of labor."

The first problem for the workers is to determine their attitude toward increased productivity. This they should support because increased output is an indispensable condition of progress. Their second problem is to decide their attitude toward the State as controller of industry. The securing of their share of increased productivity can not be left to economic tendencies but they must rely on the use of political strength. Hence the State must be made democratic and internationalism must take the place of the closed State.

Mr. Hobson's book is welcome to those familiar with his earlier volumes. In this theory he has in the past laid the greatest emphasis on distribution. The recognition in this volume of the importance of production in the near future is significant. How fully he may have anticipated the workers' attitude toward the problem is evident when one realizes the recent growth in the political activity of the Labor party of Great Britain and the statement of war aims just made by the Inter-Allied Labor Conference in London.

E. M. PATTERSON.

*University of Pennsylvania.*

ALLOGG, VERNON and TAYLOR, ALONZO E. *The Food Problem* Pp. xiii, 213. Price, \$1.25. New York: The Macmillan Company, 1917.

This work may be looked upon, by reason of the reputation and experience of the authors, as the most authoritative presentation of the food problem yet made. The first part deals with the food situation of the Allies and the United States; the second part is given over to a technical description of the uses of food which is couched in simple and, at the same time, strictly scientific language.

It is hoped that the book will have a wide circulation. It should be invaluable speakers in the spreading of knowledge regarding this most vital of all problems. The imperative need of our Allies for food is brought home forcibly. The saving of the required food lies in the voluntary acceptance of the necessities of the situation. Rationing the public cannot hope to succeed. "For, if a rationing system cannot succeed in Germany, it cannot hope to succeed anywhere." It is for this reason that the education of the public is so essential and it will take much of it to arouse people to the point of view that the greatest help they can give in winning this war is by eating corn and chicken instead of wheat and meat.

The authors lay special stress on the evils of profiteering. To those who are unable to visualize the situation, they give the following warning: "Whoso in these demands 'business as usual' is acting contrary to the forces operating in process in carrying on the war; and yet the very men who so contend for 'busi-

ness as usual' in war time would not in the least hesitate to send their own sons to the front. They do not seem to realize that their behavior in the conduct of their business increases the risk of the lives of their own enlisted sons. The cattle raiser who wishes to take advantage of high speculation prices of livestock, the wheat grower who desires to obtain the profits to be derived from unrestricted competitive buying by the frenzied nation at war, the laborer who attempts to force the highest wage on the basis of supply and demand, and the coal operator who capitalizes the contest between industrial and fireside demands for coal, all fail to visualize the situation as it actually exists and do not realize that their point of view jeopardizes the successful carrying on the war."

H. R. M. LANDIS.

Philadelphia, Pa.

NICHOLSON, J. SHIELD. *War Finance*. Pp. xxiv, 480. Price 10s, 6d. London: P. S. King and Son, Ltd., 1917.

This is a collection of articles written for various publications, particularly the *Scotsman*, from 1912 to 1917 inclusive. The title *War Finance*, is applicable to most of the papers but is not entirely accurate for all of them. Some of the views expressed by Professor Nicholson in the earlier articles must necessarily be modified in the light of later events, but his general contention expressed in the preface is defended throughout and is worth quoting as a summary of the book.

"The root evil of our financial policy has been the extravagant payment made by the state for all the services required for the War, whether of capital or labour—always excepting the labour of the actual fighting. The extravagance has only been made possible by inflation. The fruits of the evil are the waste of national resources, the increase in the inequities of distribution, and, worst of all, a degradation of the soul of the nation."

E. M. P.

#### POLITICAL SCIENCE

FREUND, ERNST. *Standards of American Legislation*. Pp. xx, 327. Price, \$1.50. Chicago: The University of Chicago Press, 1917.

The failure of the common law to adjust itself readily to changing social conditions has set for legislation the task of giving more immediate legal effect to new concepts of right and wrong, and of the public good. Social legislation, in working to this end, has been retarded by adverse decisions of the courts asserting unconstitutionality under the due-process clause. The violation of the right is found, not in the fact of regulation, but that the regulation is unreasonable. The boundaries of the field of rights protected by this clause are nowhere defined with precision. What is applied as a test in such cases is not a fixed but a variable standard called reasonableness. It is a sliding scale, the length of which at any application depends upon the social and economic views of the persons at the moment composing the court. It is not, then, a test of principle but of policy which is applied. This policy is implied and hence is judge-made, and is indefinite in content. Furthermore, the judicial test is destructive, not constructive.

The purpose of the book is "to suggest the possibility of supplementing the established doctrine of constitutional law which enforces legislative norms through post facto review and negation by a system of positive principles that should guide and control the making of statutes, and give a more definite meaning and content to the concept of due process of law."

Such a system of principles is found neither in the common law nor in constitutional provisions for reasons set forth by the author. It is pointed out, however, that certain principles of legislation, fragments, as it were, of a system, have developed from various sources, e.g., the principles of correlation, of standardization, of vested rights and of equality. It is to development within legislative practice rather than to the courts that Professor Freund believes we must look for higher standards and a more complete system of principles of legislation. In illustration the past experience with the courts is cited, together with the fact that in European countries where legislation is free from court review the legislative product is in a juristic and technical sense superior to that enacted in this country. The author believes, in the light of our own experience and in that of other countries, that "the greatest hope for establishing constructive principles of legislation lies in the further development of plans that have already been tried," including executive initiative of legislation, preparation of bills by special commissions, the delegation of power to administrative commissions, the organization of drafting bureaus, and the codification of standing clauses.

It is to be hoped that this admirable essay will soon be followed by a more extended and systematic treatise on the principles of legislation from the same pen.

FRANK G. BATES.

Indiana University.

WYLBOROUGH, CHARLES (Compiled and edited by). *The State Constitutions*. Pp. 1645. Price, \$12.00. Indianapolis: B. F. Bowen and Company, 1918.

Whoever has occasion to make frequent use of state constitutions or other fundamental laws of the land will welcome a single volume containing the state constitutions, the federal constitution and the organic laws of the territories and insular dependencies of the United States. This 1918 compilation is not to be regarded as supplanting Thorpe's *Constitutions and Charters*, but rather as affording relief, for ordinary purposes, from that older, voluminous work.

The training of the compiler and editor as Assistant Director of the Indiana Legislative Research Bureau and present Director of that Bureau (under a new name) as well as internal evidence of careful compilation and editing, give assurance that the material may be relied upon.

C. H. C.

WILSON, EDGAR E. and WEST, VICTOR J. *The Foreign Policy of Woodrow Wilson 1913-1917*. Pp. 428. Price, \$1.75. New York: The Macmillan Company, 1917.

The authors contribute to a better understanding of President Wilson's foreign policy by their concise summary of its major problems and decisions, and their analysis of the fundamental ideals shaping its development. Frequent refer-

ferences in the text to appended statements of the President and his Secretaries of State, comprising nearly two-thirds of the volume, permit the reader to test the accuracy of this exposition by an appeal to the official record.

An examination of the President's conduct of our foreign relations prior to the World War reveals the foundations of his permanent policy. His basic guide to action was a faith in democracy and the finality of the moral judgment in the minds of men as well as at the tribunal of God. From this faith grew the conviction that every nation should be free to develop constitutional liberty and "should regard every other nation as its equal; that fair dealing was the best means of preserving friendship and peace between the nations; that the guidance of established law was essential to international justice and fair dealing"; that international disputes should be arbitrated in the light of law; and finally that national force should be used only to combat criminal aggression and to further great humanitarian purposes.

By adherence to these ideals in the conclusion of arbitration treaties and in our relations with Mexico, China, Japan, the Philippines and England, the President established himself as the leader of American opinion, and enabled the United States to plead for international law and justice with "clean hands" when war engulfed the world.

The President demanded equally of all belligerents a strict observance of neutral rights guaranteed by well-established rules of international law. When the submarine warfare wantonly destroyed American life, for which no reparation was possible, violating both international law and the essential rights of humanity a break with Germany became inevitable and imperative. In contrast were English invasions of American rights, involving mere loss of property capable of full reparation through diplomatic channels.

Foreseeing our eventual entry into the world conflict, President Wilson roused an apathetic public to support an augmented army and navy; reconciled the people to a break with our traditional isolation from European affairs; and manoeuvred the European belligerents into a reasoned statement of their war aims. Thus under Woodrow Wilson's leadership our war against Germany was lifted from a selfish vindication of national rights to a lofty international purpose,—warfare for democracy, the rights of small nations, a concert of free peoples, and durable world peace.

The writers justly claim a further pragmatic sanction for President Wilson's foreign policy. As a result thereof "a European quarrel originating obscurely in petty dynastic ambition, in greedy economic rivalry, and in base national hatred was transformed, by the entrance of the United States, into a world conflict with the united forces of democracy and international peace," squarely ranged under American leadership, "against autocracy and continued world struggle."

Certain inconsistencies of the President's diplomacy are gingerly treated. While regretting the repudiation, in the proposed *modus vivendi* for submarine and merchantmen (January 18, 1916), of the contention that submarines could not operate legally under existing international law, the authors ignore an earlier repudiation in the third *Lusitania* note. Again the scant account of our Caribbean relations barely hints at the conflict of our drifting imperialism in that quarter with the Pan-American program for a union of American powers in a mutu-

guarantee of their absolute political independence and territorial integrity contemplated by the Monroe Doctrine.

LEONARD P. FOX.

Princeton University.

### SOCIOLOGY

SALMOON, ARTHUR W. *A Social History of the American Family from Colonial Times to the Present*. Vol. I, *The Colonial Period*. Pp. 348. 1917. Vol. II, *From Independence through the Civil War*. Pp. 390. Price, \$5.00 each. Cleveland: The Arthur H. Clark Company, 1918.

To those who are familiar only with the type of American history which seeks to idealize the past rather than to disclose the results of scientific research, the present volumes are destined to produce something of a shock. The author has sought to throw light upon the present problems of the family, not by theoretical generalizing, but by the description of its historic development as a social institution. The history is traced from the wider old world origins through its specific modifications under American conditions. The work represents most painstaking search for documentary evidence which is given in a profusion of detail in both quotation and reference. It is a veritable source book of social customs and conditions which have influenced the changing ideals of the American family. In Volume I, *The Colonial Period*, the author traces the development of ideas in regard to birthship and marriage, the position of women and children, sex ethics and family life in colonial New England, the Middle Colonies and the colonial South. Various factors contributed by racial elements, religious practices and traditions, Puritan standards and ideals, etc. are considered. In Volume II, *From Independence through the Civil War*, the investigation is carried forward through the period of continental development and the disappearance of the frontier, showing the increasing importance of industrialism and the abolition of slavery. Typical chapters are: Marriage and Fecundity in the New Nation, The Social Subordination of Women, The Emergence of Women, Sex Morals in the Opening Continent, Negro Sex and Family Relations in the Ante-Bellum South, Racial Association in the Old South, The Effects of the Civil War.

In his preface to Volume I, the author has anticipated the most obvious criticism which may be urged against the work, viz., the seeming undue emphasis upon the economic interpretation and upon pathological anomalies. Nevertheless, a careful reading discloses a true historic perspective which removes it from the domain of fantastic interpretations and places it upon the solid foundation of genuine historical research. It is a cyclopedia of information in regard to the evolution of family ideals and morality in America and supplements admirably such productions as Goodsell's *Brief History of the Family* and Howard's monumental work on the *History of Matrimonial Institutions*. Its usefulness as a source book is marred, however, by the lack of an index.

J. P. LICHTENBERGER.

University of Pennsylvania.



CARTER, HENRY. *The Control of the Drink Trade*. Pp. xvi, 323. Price, \$2.50. New York: Longmans, Green and Company, 1918.

As Lord D'Abernon states in the Preface, Mr. Carter's object in writing this book was to set forth in detail the regulations adopted to control the drink trade in Great Britain, the immediate purpose of each, under what conditions they have been enforced and the results that have accrued. The period covered is from the autumn of 1914 to the spring of 1917 (i.e., from the outbreak of the war to the time when, in order to safeguard food supplies, the output of liquor was curtailed by the Order of the Food Controller).

In Part I, Conditions before the War, the author points out the need for further regulation, the movement of public opinion, and the problem confronting the Control Board. Part II, The Administration of State Control, is devoted to the restrictive and constructive work of the Central Control Board, established in June, 1915. In Part III, The Effects of State Control, the author summarizes the results of the experiment. The charts and diagrams in this section are especially valuable.

The experiment of Great Britain is of outstanding importance and should be particularly interesting just now when National Prohibition is before the States.

E. G. L.

STEINER, JESSE F. *The Japanese Invasion*. Pp. xvii, 231. Price, \$1.25. Chicago: A. C. McClurg and Company, 1917.

The special merit of this volume lies in the author's appreciation that the relations of the United States and Japan in the future are far more important than the local questions created by the presence of a few thousands of Japanese in America. He recognizes that the race question, psychological rather than physical, lies at the bottom of the difficulty. He traces the advent of the Japanese to America, the changing attitudes towards them, their own reaction to American life and customs and analyzes all these things in the light of the impression they are creating in Japan. An excellent bibliography is included. It is a valuable and timely discussion. The tone is friendly and sympathetic, the statements very accurate.

C. K.

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# PROCEDURE IN STATE LEGISLATURES

BY

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## FOREWORD

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This study is a hopeful beginning of researches which will help greatly to solve some of the problems of legislative procedure. Such studies are necessary preliminaries to the popularization of the problems as well as the solution and nothing is more needed in governmental research than the basic facts underlying the legislative process, for it is undeniable that the legislative machinery does not function properly in the states or in the Congress of the United States.

Mr. Dodds has done well to go below the surface of things and tell how the legislatures actually do some of their important work. In doing so he has been plowing virgin soil a good deal of the time and the way has not been smooth. He has had to find his facts in obscure sources and to weigh and sift a vast amount of scattered material.

There are plenty of articles and books descriptive of legislative bodies but there is a dearth of descriptions of the way legislatures are organized and how they work. Everyone intimately in touch with a legislative body knows that there is a vast difference between theory and practice. Mere analyses of constitutional forms and limitations tell very little; in fact they mislead grossly. Take, for example, the provision that every bill shall be read in full on three separate days. If that were followed literally, the legislature would spend its entire time listening to the reading of bills. The actual practice is not followed anywhere and, of course, could not be, yet every general treatise on legislatures treats it as a part of the actual practice of legislatures. Many constitutional forms are merely paper provisions and that fact lends importance to Mr. Dodds' study. New light is thrown on many subjects which writers have heretofore been content to pass over in general terms because of the difficulties of detailed research.

One of the most interesting phases of Mr. Dodds' work is his discussion of the powers of a legislative body and of the separate houses. Strangely enough, no one has considered this subject sufficiently important for careful study and yet in 1913 in one of

our leading states all of the principal officers and some members of the legislature were indicted for violating a law which attempted to fix the number of employes. The court rightly held that the houses of a legislature could not be bound by such a law because it interfered with their inalienable powers. Laws in violation of this principle are on the statute books of several states.

Another subject which has not had the attention which it deserves is treated in this study, namely, the validity of the enrolled bill. There is some confusion of legal authority on this point, a majority holding that the enrolled bill cannot be impeached, while a few would allow the journals as evidence. Either conclusion leads to absurdities. If the journals or parol evidence cannot be used to impeach an act, then acts which never passed either house may become laws by the signature of the presiding officers and the governor, as actually happened in Indiana in 1913, through the trickery of some unknown person. The doctrine of the validity of the enrolled bill would make such an act valid in spite of the plain evidence that it never passed. On the other hand, if the journals are to be used as evidence, the law may be made to depend upon the accuracy of the work of legislative clerks, who are seldom known for their efficiency. Instead of taking the act from the statute books as it stands each act would have to be traced back through the journals. The doctrine that "ignorance of the law excuses no one" would truly become a joke under such circumstances.

It is just such questions as these that most need analysis and careful treatment. The physiology of legislatures should be studied rather than their anatomy. The following study tells more about how the houses are organized, how the committees work and how a bill travels through the process than has heretofore been brought together, which material is compacted into a few pages. Scarcely a superfluous word is used to describe important processes. The study will be of great basic value in the inevitable reform of legislative processes.

JOHN A. LAPP.

## CHAPTER I

### THE LEGISLATURE'S INHERENT POWERS IN MATTERS OF PROCEDURE

The methods and forms by which legislative business is carried on are notoriously lax. Rules designed to protect the rights of the minority, to secure due deliberation and publicity for all legislative acts, and to introduce order into the performance of legislative duties are known to be frequently disregarded. Judgments of presiding officers in direct contravention of the rules have been sustained by majority vote, and legislative houses, in flagrant violation of their own law, have overruled correct decisions. To such loose and chaotic practice was due, in no small degree, the growing popular distrust which so boldly marked the nineteenth century attitude towards our state legislatures. Successive constitutions reflect the decline of confidence in representative assemblies by defining and restricting in great detail the powers which the legislature may exercise. Relief from the prevailing extravagance and recklessness was sought by designating the forms and procedure by which the legislature must act. Thus the newer constitutions, in an effort to insure order and deliberation in the work of the legislatures, or at least to prevent repetitions of certain gross frauds, came to include specific provisions governing parliamentary practice. Today provisions that a bill must be read three times on separate days are common, and numerous regulations concerning introduction of bills, signing by presiding officers, functions of committees, et cetera, occur in many organic laws.

Occasionally the legislature itself, in the spirit of repentance, elevated a rule of procedure to the plane of statute law. Thus the requirement that local or private bills must be published in the district which they affect found a place on the statute books. In like manner, improved methods of handling contested election cases were attempted by acts delegating disposition of them to the courts. The purpose of course was to establish by legislative action a few fundamental parliamentary rules to control the whims of the legislature without the observance of which no action could be deemed legal.

## INHERENT POWERS DEFINED

But when the aid of the courts was summoned to apply these provisions, whether embodied in the constitution or occurring merely in the statute law, the doctrine of inherent powers and privileges of legislative bodies was seen to be involved. Historically this is a very ancient doctrine. It takes its source in the long struggle in England between King and Parliament, when the matter of gaining and securing recognition of a privilege was a tremendously important thing. A privilege once established, the Commons were at that point secure from royal interference; either directly by agents of the king or through the processes of the courts. But it is one of the curious developments of history that a principle, employed to protect the representatives of the people against coercion and intimidation by an autocratic power, should today remove them from all legal liability so far as the forms by which they conduct themselves are concerned.

Legal theory recognizes that each department of government possesses certain inherent powers of which it cannot be deprived by a coördinate branch. This is the doctrine of inherent powers. Speaking generally, these powers are such that if the free exercise of them were obstructed the effective discharge of the duties of the constituent branch would be seriously impaired. It is generally accepted that no explicit constitutional provision is necessary to the exercise of these powers and privileges upon the part of the legislature, but that they are implied in the general grant of legislative power and are necessary if that body is to fulfill its function. The broadest expression given to such rights describes them as inherent in the law-making branch and capable of being ascertained primarily by an examination of common parliamentary law. They are not derived from express provisions in the constitutions. On the contrary they arise from the very nature of a legislative body. Indeed the constitution is not a grant but a restriction upon this power.<sup>1</sup> It

<sup>1</sup> *Ex parte McCarthy*, 29 Cal. 395. This follows closely the English theory of *lex et consuetudo Parliamenti* as outside the common law. See Blackstone's "Commentaries," Bk. I, c. 2; "But the maxims on which they (the two houses of Parliament) proceed, together with the method of proceeding, rest entirely in the breast of parliament itself and are not defined or stated by any particular stated law." Coke also, 4 Inst. 15, "Judges ought not to give any opinion of a matter of privilege, because it is not to be decided by the common laws but *secundum*

the light of this principle, provisions which read, "Each house shall have all other powers necessary for a branch of a legislature of a free state," can add nothing to prerogatives already enjoyed.<sup>1</sup> It is worth while to examine the nature of these inherent rights, which can be restricted only by the constitution itself and in the exercise of which a legislature cannot bind itself any more than an individual can bargain away his freedom.

#### THE POWER TO DETERMINE THE QUALIFICATIONS OF MEMBERS IS EXCLUSIVE

The right to judge of the elections and qualifications of its own members is expressly conferred upon each house by the constitutions of forty-six states.<sup>2</sup> Originally developed by the House of Commons as a protection against encroachment by the king, it would exist today, in the absence of any constitutional grant, as an inherent power "necessary to the legislature to enable it to perform its high function." "It is the power of self-protection."<sup>3</sup> The right being exclusive, the legislature cannot refer ultimate decision to any other tribunal. The courts can enter no judgment. Their decision is merely advisory, if indeed they can act in the matter at all.<sup>4</sup> Neither will the courts inquire the reason for the expulsion of a member, no matter how arbitrary and unfair the action of the legislature.<sup>5</sup> In no case will the courts examine the returns to see who was

*non leges et consuetudinem Parliamenti.*" American courts have declared that in general the two houses are organized and governed in accordance with the recognized principles of parliamentary law. *Ex parte Screws*, 49 Ala. 57; *State v. Rogers*, 56 N. J. L. 490. The accepted opinion in Congress is that until rules have been adopted each Congress operates under what Speaker Reed termed common parliamentary law, in which the practice of the House constitutes a principal part. *Records* 6759-6763.

<sup>1</sup> Such provisions occur in thirteen state constitutions.

<sup>2</sup> See Index-Digest of State Constitutions, prepared for New York Constitutional Convention, 1915, pp. 885-6 and 925-6.

<sup>3</sup> *Hiss v. Bartlett*, 69 Mass. 473; *French v. State*, 146 Cal. 604.

<sup>4</sup> *In re Contested Election of Senator*, 111 Pa. St. 235. In *State v. Gilmore*, 11 Kan. 551, an act empowering a court to vacate a seat of a member who upon trial was found to have been intoxicated in a public place was declared void. The legislature's exclusive power to judge of the qualifications of its members is not exhausted by admission to a seat. In *Dinan v. Swig*, 112 N. E. 91 (Mass. 1916) the power of a court to render even an advisory opinion is denied. Also in *State v. District Court*, 50 Mont. 134 (1914).

<sup>5</sup> *Hiss v. Bartlett*, *supra*; *French v. State*, *supra*; *Auditor-General v. Board*, 51 N. W. 483 (Mich.).



legally elected, the legislature being the sole judge of all questions of law or fact involved.<sup>7</sup> The courts will exercise no supervision over justices of the peace authorized by statute to take testimony in contested elections of members of the legislature. The powers of these officials when so acting are not judiciary, but rather in the nature of the work of a committee of the house.<sup>8</sup>

Since the courts refuse to review in any manner the action of the legislature in admitting or expelling members, the binding force of statutes defining the methods of contesting elections rests solely in the will of the house. This is in harmony with the view adopted by Congress that such an act is only a wholesome rule not to be departed from without cause, and that a petition failing to proceed according to law is not without remedy.<sup>9</sup> Such laws must be viewed as convenient aids to the legislative house and cannot exist as a check upon the legislature's power to adopt any other procedure at will. In fact it has been recently declared that a statute attempting to define the procedure to be followed would be void.<sup>10</sup>

#### THE POWER TO PUNISH FOR CONTEMPT IS A PREROGATIVE

A second inherent right is the power of a house to punish contempts of its authority. Following English precedents<sup>11</sup> our courts at first held that this was a general power necessary to the exercise of legislative functions and the adjudication of the house was sufficient to establish the fact of contempt.<sup>12</sup> This exclusive jurisdiction, however, was restricted in the opinion, rendered in the famous English case of *Stockdale v. Hansard*, which declared that, although no court could relieve a person committed for contempt from punishment lawfully inflicted, the question of the jurisdiction of the house is always open to inquiry.<sup>13</sup> The United States Supreme Court finally accepted this view and in the case of *Kilburn v. Thompson*

<sup>7</sup> *O'Donnel v. Judges*, 40 La. Ann. 598; *People v. Mahaney*, 13 Mich. 481; *Bingam v. Jewett*, 66 N. H. 382; *Dalto v. State*, 43 Ohio St. 652; *Corbett v. Naylor*, 25 R. I. 520.

<sup>8</sup> *State v. Peers*, 33 Minn. 81.

<sup>9</sup> *Case of Williamson v. Sickles*, 1 Hinds 776.

<sup>10</sup> *Dinan v. Swig*, *supra*.

<sup>11</sup> See May, "Practice and Usages of Parliament," 10 ed. p. 131 *et seq.*

<sup>12</sup> *Anderson v. Dunn*, 6 Wheat. 204, followed in a series of cases until *Kilburn v. Thompson*, 103 U. S. 168. See also *Coffin v. Coffin*, 4 Mass. 35.

<sup>13</sup> 9 Ad. & E. 1, and 11 Ad. & E. 253.

inquired into the jurisdiction of the House of Representatives, denying at the same time that the right to punish for contempt could derive any authority from English precedents, since from time immemorial Parliament has been a High Court of Judicature. The Court asserted that, if the House of Representatives is to punish for contumacy as a witness, the testimony must be required in a matter in which the House can properly proceed. In the case in question the investigation was found to be of a judicial nature and in excess of the power of the House. The warrant for the prisoner's arrest was therefore void.

The state courts were quick to adopt the reasoning in *Kilburn v. Thompson* and to inquire into the lawfulness of legislative contempt. The principle followed was that the houses of the legislature are free to punish reculant witnesses only if the information sought is in the aid of legislation, otherwise such punishment is an invasion of the judicial department.<sup>14</sup> But the doctrine that the power to command respect is obviously so essential to the enlightenment and guidance of the legislature that it has always been exercised without question remained unshaken. The constitution does not create the power, but fixes and limits the mode and duration of punishment for disobedience.<sup>15</sup>

#### THE ATTITUDE OF THE NEW YORK COURTS

The New York courts of late years have seemed unwilling to concede to the legislature an inherent or even a common law right to punish for contempt. The constitution of this state, contrary to prevailing form, does not authorize in specific terms a single house of the legislature to punish for contempt or to expel members, and is likewise silent as to a member's privilege from arrest, although elsewhere these prerogatives are generally held to inhere without express constitutional grant. Since 1830 these powers have been

<sup>14</sup> *In re Chapman*, 166 U. S. 661; *In re Gunn*, 50 Kan. 155; *Burnham v. Morissey*, 80 Mass. 226; *People v. Keeler*, 99 N. Y. 463; *Matter of Barnes*, 204 N. Y. 108; *People v. Webb*, 5 N. Y. Supp. 855; *Ex parte Parker*, 74 S. C. 466; *Sullivan v. Hill*, 79 S. E. 670 (W. Va.); *Ex parte Watters*, 144 S. W. 531 (Tex.).

<sup>15</sup> *Ex parte McCarthy*, 29 Cal. 395; *Lowe v. Summers*, 69 Mo. App. 637; *State v. Matthews*, 37 N. H. 450; *Ex parte Dalton*, 44 Ohio St. 142; *Ex parte Parker*, *supra*; *Sullivan v. Hill*, *supra*; The power to punish may be delegated to committees by statute. *Ex parte Parker*, and *Sullivan v. Hill*; also strong dissenting opinion, *In re Davis*, 58 Kan. 368.

provided for by general statute, and the offenses enumerated in the acts have been declared to be the only ones which either house is authorized to punish as contempts and to take the place of the numerous offenses treated by Parliament as such. The statute conferring the power, judicial in nature, is not void, however, as invading the judiciary department since it is necessary and appropriate to legislative action.<sup>16</sup> More recently the Code of Civil Procedure<sup>17</sup> has given over the duty of punishing recusant witnesses to the courts, and the Court of Appeals holds that in so doing the legislature demonstrated its lack of an inherent power to punish for contempt in disobedience to its process.<sup>18</sup> This is a serious inroad upon the prevailing theory of prerogative, if indeed the concept is not completely shattered. The legislature is considered to have acquired through its general legislative power the privileges not specifically conferred by the constitution. They are not exclusive or inalienable and are defined by statute law.<sup>19</sup>

#### PARLIAMENTARY PROCEDURE NOT SUBJECT TO JUDICIAL REVIEW

With a view towards maintaining the effective independence of the coördinate departments of government in the discharge of their appropriate duties, the courts have generally permitted the legislatures themselves to interpret constitutional provisions concerning methods of procedure. For example, the courts of several states will not admit evidence to impeach the validity of an act on the ground that some constitutional requirement as to the manner of passage has not been observed. If the act is regularly enrolled, authenticated by the presiding officers of both houses, and signed by the governor, the evidence is conclusive that all constitutional

<sup>16</sup> *People v. Keeler*, *supra*; See also *People v. Webb*, *supra*. The legislature has only such powers to punish as have been conferred upon it by statute.

<sup>17</sup> ¶ 854 to ¶ 856.

<sup>18</sup> *Matter of Barnes*, 204 N. Y. 108.

<sup>19</sup> In a recent Texas case the court held that in accordance with the doctrine of the separation of powers the legislature's right to punish for contempt was derived solely from the constitutional grant, Art. III, sec. 15, which authorizes each house to punish persons not members for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings. Failure to answer the questions of a committee does not constitute obstruction of legislative proceeding and the legislature was not competent to adjudge for contempt for so doing. *Ex parte Walters*, 144 S. W. 531. This denies to the legislature the right to punish indirect contempts.

provisions governing procedure have been fulfilled, and it cannot be impeached by the journals. The theory adopted is that the legislators are bound by their oaths to support the constitutional mode of procedure and, although disregard constitutes breach of duty, the presumption must always be that the coördinate branch has fulfilled its duty.<sup>20</sup> Any other interpretation leads to uncertainty as to what is law and ends logically in the power to impugn the journals.<sup>21</sup>

This follows the English precedent, established in 1617, that the Journals of Parliament are not records but "remembrances for the form of proceeding to the record," and cannot weaken or control the statute, which is a record to be controlled only by itself. "When the act is passed the Journal is expired!"<sup>22</sup> It is interesting to notice the circumstances which surrounded this decision. The case involved a statute passed in the reign of Henry VIII. As no journal was kept for the Commons until the time of Edward VI, the journal of the House of Lords was pressed to show from entries thereon that the bill came up from the lower house with an amendment which was a prerequisite to the latter's approval of the measure. The bill, as passed by the Lords and enrolled under the Great Seal, contained this amendment cancelled and suit was brought to invalidate the act, but without success. In the absence of any record from the lower house it is not strange that the act as delivered to the Chancery should be held to be the only true record, yet many of our state courts still follow this precedent by refusing to admit the journals to impeach a properly certified act.<sup>23</sup>

#### JOURNALS PRESUMED FAVORABLE TO THE ACT

Another view, which has been expressed by the courts of more than half the states, is that the properly certified act is only *prima*

<sup>20</sup> *Kilgore v. McKee*, 85 Pa. St. 401.

<sup>21</sup> *State v. Jones*, 6 Wash. 452. In *Field v. Clark* (143 U. S. 649) the Supreme Court considered that it was advisable to make the certificate of the presiding officers the evidence instead of journals kept by minor officials, who were liable to make mistakes.

<sup>22</sup> *Rez v. Arundel*, Hobart 109.

<sup>23</sup> *Yolo County v. Colgan*, 132 Cal. 265; *Eld v. Gorham*, 20 Conn. 16; *Müller v. Osborn*, 55 Iowa 706; *Schull v. State*, 173 Ind. 689; *Owensboro v. Barclay*, 102 Ky. 16; *Swann v. Buck*, 40 Miss. 268; *State v. Beck*, 25 Nev. 68; *Power v. Kitching*, 10 N. D. 254; *Mason v. Cranbury Twp.*, 68 N. J. L. 149; *Narregang v. Brown County*, 14 S. D. 357. It is believed that the above comprise those states holding the enrolled act conclusive.

*facie* evidence of its validity and that recourse may be taken to the journals to see if all constitutional provisions relative to procedure have been observed. The presumption, of course, is always favorable to the act, but this may be overthrown by affirmative evidence on the journals. But it must appear affirmatively and beyond all doubt that the act was not properly passed. If the journals are silent or ambiguous it must be presumed that the constitution was followed. For example, if the journals show that a bill failed to receive a constitutional majority on final passage and the words "so the bill failed to pass" were entered, the bill never became law, although this could not be presumed from mere silence.<sup>24</sup> In like manner the courts will not consider the fact that notice of introduction of a local or private act was omitted although the constitution may require it to be published. The advertisement of such notice in the constitutional manner will be presumed and the journals need not show it.<sup>25</sup>

Although it usually cannot be assumed that constitutional requirements were omitted because a record of every step stipulated

<sup>24</sup> *Currie v. Southern Pacific Co.*, 21 Ore. 571. The following cases illustrate the points involved: *C. B. & Q. v. Smythe*, 103 Fed. 376; *Gibson v. Anderson*, 131 Fed. 376. *In re Duncan*, 139 U. S. 449 (Federal Courts adopt adjudication of state courts). For acts of Congress the enrolled bill is sufficient, *Field v. Clark*, 143 U. S. 649. *Ex parte Howard & Co.*, 119 Ala. 484; *Andrews v. People*, 33 Colo. 193; *State v. Francis*, 26 Kan. 724; *Attorney-General v. Rice*, 64 Mich. 385; *State v. Field*, 119 Mo. 593; *Colburn v. McDonald*, 72 Neb. 431; *Territory v. O'Conner*, 37 N. W. 765; *State v. Smith*, 44 Ohio St. 348; *Hiskell v. Knox Co.*, 177 S. W. (Tenn. 1915) 483. Of course if the constitution stipulates entry in the journal the journal must show the entry.

<sup>25</sup> *Vann v. State*, 65 Fla. 160; *Critchler v. Crawford*, 105 Ga. 108; *Bray v. Williams*, 137 N. C. 387. In order to make the requirement of notice effective Alabama included in her constitution, adopted in 1901, a clause which prescribes that the evidence of the publication of notice shall be spread on the journals and directs the courts to pronounce void any private or local law for which the journals do not show that notice was published. Numerous acts have thus been nullified. See *Kumpe v. Irvin*, 140 Ala. 460.

But acts have been held invalid because the requirement of notice was not observed, *Ashbrook v. Shaub*, 60 S. W. (Mo.) 1085; *Attorney-General v. Tuckerton*, 67 N. J. L. 120; *Chalfant v. Edwards*, 173 Pa. St. 246; here the fact of no notice was admitted by both parties and the court accepted their admission. In New Jersey this was held insufficient to overthrow the *prima facie* evidence of the act (*Freeholders v. Stevenson*, 46 N. J. L. 173). The fact of no notice is hard to show if the courts accept the journals as final.

in the constitution does not appear in the journals,<sup>26</sup> the situation changes when certain facts are obliged to appear thereon. Such facts can be shown in no other way and their failure to appear on the journals will invalidate the act, and no presumption arises from the enrollment of the act.<sup>27</sup>

The trend of recent decisions has been towards permitting resort to the journals to ascertain if the constitutional forms of procedure were observed, and away from the English view that the act is the only record. Indeed the courts of two states have gone so far as to demand that the journals must show affirmatively every step prescribed by the constitution. Failure to do so is conclusive evidence that the step was not taken, regardless of whether or not the constitution explicitly orders entry thereof. Therefore, the express provision of the constitution for the entry of the ayes and noes on the journal does not imply that other steps need not be taken, the conclusion being that if facts are not set forth they did not transpire.<sup>28</sup>

This would seem the sensible view if effect is to be given to articles in the constitution designed to cure flagrant evils in parliamentary practice. If recourse is had to the journals they should be considered as a true and complete account of the legislative body, and omission therefrom of a step made mandatory by the constitution should be conclusive evidence that it was not taken. Journals might then be kept with greater care, and this in turn would promote closer adherence to constitutional methods.

#### CONSTITUTIONAL PROVISIONS SOMETIMES DIRECTORY

The view sometimes taken by the courts that constitutional directions concerning procedure are directory merely and not man-

<sup>26</sup> Presumed that ayes and nays were taken on final passage of a bill although journal was silent, *State v. Rogers*, 22 Ore. 348. The same when journals fail to show three readings required by the constitution. See 44 Cent. Digest; Statutes, par. 17.

<sup>27</sup> *Ex parte Howard*, 119 Ala. 484; *State v. Swan*, 51 Pac. (Wyo.) 209. *Cotton Mills v. Wazhaw*, 130 N. C. 293.

<sup>28</sup> *Cohn v. Kingsley*, 5 Idaho 416. In *Brown v. Collector*, 5 Idaho 589, the journal did not show that the bill had been read by sections as the constitution required. See also *Spangler v. Jacoby*, 14 Ill. 297. In *Ryan v. Lynck*, 68 Ill. 160, the journal did not show that the bill had been read on three different days. *People v. Bowman*, 247 Ill. 276; *Neiberger v. McCullough*, 253 Ill. 312. The journal must show that the bill and amendments were printed.

datory gives the legislatures still greater freedom in their application. This doctrine is borrowed from the principle that, when the provisions for carrying out a statute were not designed to operate as a condition to its performance and do not to the judicial mind appear essential, they will be regarded as directory. In such cases the proceedings under the act will be held valid, although the command of the act as to form and time has not been strictly observed; the time and manner not being the essence of the thing required to be done.<sup>29</sup>

In many cases this is the reasonable attitude towards constitutional prescriptions, since the execution of the legislative function is more important than the method. Accordingly it is usual to hold that an incorrect enacting clause will not invalidate the law, the form set forth in the constitution being considered directory.<sup>30</sup> Constitutional provisions that bills shall be enacted into clauses and sections are viewed in the same light.<sup>31</sup> In situations such as these the will of the framers of the constitution may be accomplished without strict adherence to constitutional standards, for the questions are purely ones of form, but when methods of procedure are involved the situation is more serious. Requirements such as that a bill shall be read on three separate days exist to insure deliberation and to check flagrant evils. As Cooley<sup>32</sup> well points out, the interpretation of constitutional prescriptions which renders them merely directory is charged with dangerous elements. The fundamental law does not generally undertake to prescribe rules of proceeding except where such rules are looked upon as essential to the thing to be done.

Sections which require that every bill shall have three readings on separate days have sometimes been held mandatory, sometimes merely directory,<sup>33</sup> and the same is true of the provision that all

<sup>29</sup> Potter's, "Dwarris on Statutes," p. 222 and p. 226 note. See also *People v. Spruance*, 8 Colo. 307.

<sup>30</sup> *McPherson v. Leonard*, 29 Md. 377; *Cape Girardeau v. Riley*, 52 Mo. 424; *Swann v. Buck*, 40 Miss. 368; *State v. Burrow*, 119 Tenn. 376; But in *State v. Rogers*, 10 Nevada 250, the omission of one word from the enacting clause rendered the act void. The Court was moved to this extreme view by Cooley on "Constitutional Limitations," 7 ed., p. 214.

<sup>31</sup> *County Commissioners v. Meckens*, 50 Md. 28.

<sup>32</sup> Cooley, "Constitutional Limitations," 7 ed., pp. 213-214.

<sup>33</sup> Mandatory, *Ryan v. Lynch*, 68 Ill. 160; *Board of Supervisors v. Heenan*, 2 Minn. 330; In the latter case the court considered that since the constitution



bills shall be signed by the presiding officers and the fact entered in the journals.<sup>34</sup> Although clauses requiring that bills have but one subject clearly expressed in the title are generally mandatory, a few decisions have declared them to be merely directory.<sup>35</sup>

The rule has been applied that the constitutional prescription is directory where there is no clause declaring the act void if the direction be not followed,<sup>36</sup> whereas if the reading is that "no bill shall become a law" unless a certain procedure is followed the provision is mandatory.<sup>37</sup> However this rule is not general, for affirmative clauses have often been held mandatory, largely under the influence of the attitude taken by Cooley. From the viewpoint of legislative procedure the question is not of prime importance as long as courts refuse to invalidate an act other than by affirmative statements on the journal.

#### PAROL EVIDENCE INADMISSIBLE TO OVERTHROW JOURNALS

The courts have consistently refused to admit parol evidence to overthrow the favorable presumption towards an act, the journal being the only evidence competent to impeach it.<sup>38</sup> The integrity of the journal cannot be assailed for fraud or deceit. When approved by the house it becomes the act of the house itself and to inquire into its veracity would be to invade a coördinate department provided that the necessity for three readings on separate days could only be suspended by a two-thirds vote, it was demonstrated that the framers of the fundamental law attached great importance to the manner of passing an act. *Directory*, *Miller and Gibson v. State*, 3 Ohio St. 475.

<sup>34</sup> *Mandatory*, *State v. Glenn*, 18 Nev. 34; *State v. Keiseretter*, 45 Ohio St. 284; *Burrit v. Commissioners*, 120 Ill. 322. *Directory*, *In re Roberts*, 5 Colo. 495; *Leavenworth v. Higginbotham*, 17 Kan. 62 (otherwise the presiding officers would have the veto power); *State v. Mason*, 155 Mo. 486; *Telegraph Co. v. Nashville*, 118 Tenn. 1.

<sup>35</sup> *Washington v. Page*, 4 Cal. 388; *In re Boston Mining Co.*, 51 Cal. 624; *Cato v. Corrington*, 29 Ohio St. 102.

<sup>36</sup> *People v. Supervisors*, 27 Barb. (N. Y.) 584; *People v. Supervisors of Chenango*, 8 N. Y. 317; *McClinch v. Sturgis*, 72 Maine 288; *State v. Meade*, 71 Mo. 266.

<sup>37</sup> *Larkin v. Simmons*, 155 Ala. 273; *Cummins v. Gaston*, 100 S. W. (Tex.) 474.

<sup>38</sup> *Ames v. U. P. Rwy. Co.*, 64 Fed. 165; *State v. Brody*, 148 Ala. 381; *People v. Hatch*, 33 Ill. 9; *Brays v. Williams*, 137 N. C. 387; *Auditor-General v. Board*, 51 N. W. 483 (Mich.).

of government. If the journal contains errors the house itself is the only tribunal competent to correct them.<sup>39</sup>

This freedom from judicial inquisition is granted the legislature as a right inherent in an independent department of government. Where the constitution has imposed restrictions upon it as to the methods by which it shall act, it claims the prerogative of applying these restrictions. If, during the passage of an act, the constitution has been violated, attention is called to the breach by raising a point of order on the floor. Thus a point of order that notice had not been given for a private bill as ordered by the constitution is fatal if sustained.<sup>40</sup> Presiding officers refuse to rule on the constitutionality of a measure unless a point of order is involved. It is then their duty to do so.<sup>41</sup> The Missouri Constitution (Section 37, Article III) empowers five members of either house to protest that the constitution has been violated in the passage of a bill, which protest is to be noted on the journal. The courts hold, therefore, that in the absence of such protest it will be presumed that the legislature was not remiss.<sup>42</sup> But as the same courts have ruled that to nullify an act the journals must show affirmatively and beyond all doubt that the constitution was not followed, it is difficult to see how a parliamentary objection would have much weight.<sup>43</sup>

#### THE VALIDITY OF PARLIAMENTARY RULES

The constitutions of all the states except Georgia empower their legislatures to make their own rules of procedure, although nothing is clearer than that this prerogative would inhere without express constitutional grant. From this it follows that no court will review any infraction of the legislative rules, and if the houses choose to ignore them completely the validity of their acts is in no

<sup>39</sup> *State v. Smith*, 44 Ohio St. 348. Here a spurious and false journal accomplished the validity of an act; protests and affidavits spread on the journal at a later date were of no effect. See also *Taylor v. Beckham*, 108 Ky. 278, where it was averred that in an election contest following the murder of Goebel the journals were fraudulently made out pursuant to a conspiracy. See further *Wise v. Briggs*, 79 Va. 269.

<sup>40</sup> Penna. House Journal, 1876, p. 790 *et passim*.

<sup>41</sup> For a complete discussion see Mass. Senate Journal, 1869, p. 341.

<sup>42</sup> *McCafferty v. Mason*, 155 Mo. 486.

<sup>43</sup> *State v. Field*, 119 Mo. 593.

way affected.<sup>44</sup> A house may adopt any procedure it sees fit, and change it at any time without notice, but it cannot bind itself by establishing unchangeable rules.<sup>45</sup> In this respect joint rules are no more binding than the rules of a single house, their observance likewise resting upon the discretion of the legislature.<sup>46</sup>

The constitution of Minnesota contains a clause obviously designed to increase the authority of the rules of the two houses. Bills, passed in conformity to the rules of each house and to the joint rules, are to be presented to the governor. (Section 21, Article IV.) In an early case the Supreme Court of the State discussed the probability that by this recognition the rules were designed to be placed on the same footing with the rules incorporated in the constitution.<sup>47</sup> Nevertheless, no court has nor will any court be apt to test the possibilities of this provision because of the doctrine that no act can be impeached except by affirmative evidence on the journal.<sup>48</sup>

#### THE AUTHORITY OF STATUTES REGULATING PROCEDURE

Brief reference has already been made to frequent attempts to secure a more refined procedure by incorporating certain rules in the statute law, the thought being that once a rule has received the approval of the governor in the form of a legislative act, its observance rests no longer upon the whim of the legislature. Following the passage of such laws, the question arose whether or not a binding authority higher than a mere parliamentary rule had been attained in any manner which the courts were bound to respect. The general verdict has been that these self-inflicted restraints have no higher validity than a rule of practice of a single house. Thus a statute directing that every bill shall have three readings on separate days was merely directory and its suspension by less than a two-thirds vote, although forbidden by the act, did not invalidate legislative action on a bill. Such a statute receives its entire force from legislative sanction and exists only at legislative pleasure. It is no more than a rule of procedure adopted by the legislature to

<sup>44</sup> *McDonald v. State*, 80 Wis. 407; *Brays v. Williams*, 137 N. C. 387; *Wiss v. Bigger*, 79 Va. 269.

<sup>45</sup> *French v. State Senate*, 146 Cal. 604.

<sup>46</sup> *Railway Co. v. Gill*, 54 Ark. 101.

<sup>47</sup> *Board of Supervisors v. Heenan*, 2 Minn. 335.

<sup>48</sup> *State v. Hastings*, 24 Minn. 78.

govern its own proceedings.<sup>49</sup> Neither can one legislature bind another by a particular mode of repealing or amending statutes, for no form can be prescribed for legislative action which the constitution does not lay down.<sup>50</sup>

The position of the courts is further revealed by their attitude towards acts which have been called out by the numerous evils attending special and local legislation. In states where no constitutional mandate exists it has been common to provide by statute that notice of intention to introduce any special or local act must be published in approved form. The universal opinion of the courts has been that such statutory requirements may be disregarded since they can exist only for the legislature's guidance and convenience.<sup>51</sup>

The practice of Congress conforms to the theory prevailing in the states. A rule of procedure accordingly is not controlled by any act of a preceding Congress,<sup>52</sup> although a law passed by the then existing Congress has been recognized as binding in such matters.<sup>53</sup> It need hardly be pointed out, however, that, when the question of suspension comes up, statutes of the sort under discussion have a validity higher than a simple rule, inasmuch as the prestige of a statute is greater than that of a mere rule of practice.

In an effort to assure the actual presence of members at the final passage of a bill and to escape the "short roll call," New York

<sup>49</sup> *Sweitzer v. Territory*, 5 Okla. 297.

<sup>50</sup> *Brightman v. Kernor*, 22 Wis. 54.

The New York Commission to recommend changes in methods of legislation (appointed by the Governor, 1895) urged that certain provisions of the joint rules be enacted into statutes that they might at least be binding on each house taken separately. (N. Y. Assembly Documents No. 20, Session of 1896.) This is an incorrect statement of law.

<sup>51</sup> *Manigault v. Ward*, 123 Fed. 707 (affirmed 199 U. S. 473, although this point did not come up). *Derby & Turnpike Co. v. Parker*, 10 Conn. 522; *Chamlee v. Davis*, 115 Ga. 266; Opinion of the Justices, 63 N. H. 625; *Sherman v. Benford*. 10 R. I. 559.

In *Chalfant v. Edwards*, 156 Pa. St. 246, the court spoke with disfavor of the opinion that one legislature might disregard at pleasure the directions of its predecessor concerning the publication of notices of private bills, and pointed out that although the power to repeal the act could not be doubted yet it had not been exercised, and the citizens of any locality had the right to rely on the observance of its provisions. The case, however, was decided on other grounds.

<sup>52</sup> 4 Hinds 3298, 3579, 3819.

<sup>53</sup> 5 Hinds 6767, 6768.

passed an act which directs the presiding officers of each house to certify to the presence of a constitutional quorum and passage by a constitutional majority.<sup>44</sup> No bill was to be deemed passed unless so certified, and the certificate was to be conclusive evidence of the fact of passage. Yet this law has been declared void. If the journals show a constitutional quorum present and the necessary affirmative votes, the act is good,<sup>45</sup> and a defective certificate can be supplemented by the journals.<sup>46</sup> Here again the legislature is forbidden the right to bind itself in matters of form and the conclusion must be that the success of measures such as we have been discussing must be judged by their moral effect upon the legislature's conduct of business, and not by their legal force.

The experience of those states which try to keep their codes complete illustrates the futility of attempts to control legislative practice, as it were from the outside. For example the Political Code of California (Sec. 249-250) requires that each bill proposing an addition to the general laws shall be codified by the judiciary committee of one of the houses, but although this codification is omitted the validity of such acts cannot be questioned.<sup>47</sup>

#### LEGISLATIVE EMPLOYES

Attempts to regulate by statute the number and compensation of legislative employees have likewise involved the power of the separate houses to manage their own affairs in their own way, without being amenable to any other department of government. The multiplication of legislative sinecures has been a common method of rewarding the faithful, and many states, profiting by experience, have set forth by statute the specific number of employees allowed each house and their compensation. Clearly, however, the observance of such laws rests with the houses of the legislature and varies widely in different states. It can be truthfully said that they are passed largely for moral effect. In Massachusetts the provisions

<sup>44</sup> Now known as Chap. 37, § 40, Laws of 1909.

<sup>45</sup> *In re Stickney's Estate*, 185 N. Y. 107.

<sup>46</sup> *People v. Supervisors of Chenango*, 8 N. Y. 317.

<sup>47</sup> Statement of N. W. Thompson, President pro tem of the California Senate, 61st Session, in *Legislative Manual for California*, 1915. Mr. Thompson also suggests that laws of this nature are contrary to the provision of the constitution which empowers each house to determine the rules of its own proceedings.

of the statutes are followed scrupulously in the employment and payment of legislative helpers.<sup>58</sup> Vermont reports that considerable was accomplished by embodying such provisions in the laws rather than leaving them to the independent action of the two houses, and that they have failed of observance only in unimportant details.<sup>59</sup> On the other hand, it is common elsewhere for the legislature to disregard such regulations on the ground that they infringe upon the legislative prerogative.<sup>60</sup> The method prevailing of old in New Jersey was for each house to employ a great number of unnecessary aids and to take the chance that their compensation would be provided for in the bill which passed at the close of the session to meet unexpected expenses. Since the passage of the act defining the number and compensation of employes this abuse has to a great extent disappeared, although the scheme has not been entirely successful.<sup>61</sup>

Indiana's recent experience is an extreme illustration of the situation. By an act of 1895 the number and pay of the legislature employes were strictly limited, but for several years the allowance for employes had been increasing in both houses contrary to the statute, until finally in the session of 1913 the amount spent for help exceeded all previous records.<sup>62</sup> Following this session

<sup>58</sup> Statement of Mr. Henry D. Coolidge, Clerk of Massachusetts Senate.

<sup>59</sup> Mr. John M. Avery, Legislative Reference Librarian, Vermont.

<sup>60</sup> Miss Ida M. Anding, Legislative Reference Librarian, South Dakota, states that subsequent legislatures have disregarded for the above reason an act regulating employes. In Illinois both houses have violated similar provisions (Mr. Finley F. Bell, Legislative Reference Librarian). Because the number of employes at the 1913 session had been more than double that provided by statute, the Progressive element of the 1915 House tried to get the committee on contingent expenses on record as to how many would be added in excess of the statute during the session upon which they were entering (Illinois House Debates, 1915, p. 149). The attempt failed and the usual conditions prevailed. In New York, in order to bring the law into conformance with practice, the legislative statute was amended in 1915 to permit either house to increase at will the number of its employes (*Laws of 1915*, c. 483). In the majority of states excess employes are paid from the contingent fund.

<sup>61</sup> Mr. John P. Dullard, New Jersey State Librarian.

<sup>62</sup> In 1913, although the statute allowed forty-five employes in House and Senate, the actual number was approximately one hundred and fifty. Between 1907 and 1913 the sum expended for "help" in the Senate increased from \$36,668 to \$61,572. The allowance for doorkeepers increased more than seven thousand dollars, and the added employes performed only nominal duties (*See Senate*

several members and officers of both houses were indicted and tried in criminal court for making out fraudulent warrants to pay men employed contrary to law. The question considered by the court was whether the Senate and House acting separately had the right to employ assistants in excess of the numbers named in the act.<sup>62</sup> The court did not accept the contention that the act of 1895 was binding on the two houses until repealed. The power of each house to fix the number of employes was not conferred by the General Assembly, but came in the nature of an inherent right which the General Assembly acting as a law-making body cannot curtail or limit. Therefore the act was never binding.

This opinion represents fairly well the usual attitude of legislators toward statutes which seek to control legislative employes. Freedom to determine the number and allowance of employes is a prerogative, similar to the power of judging of the qualifications of members or of punishing for contempt, and is indispensable.<sup>64</sup>

In accord with this doctrine, a joint committee of the Montana Legislature appointed to make provision for the payment of employes recently reported that the section of the constitution<sup>65</sup> which requires the legislature to provide by law the number and compensation of employes is fulfilled if the legislature leaves by law to each house the right to designate the number of assistants as the times demand.<sup>66</sup>

In opposition to the above, is the view that the right to employ clerks and assistants at will is not inherent, but can be restricted by law. The legislature, although the law-making power, is itself regulated and controlled by law. Therefore, if employes are desired in addition to those specified by statutes, the law must be so

regulated (see *Journals*, 1907 and 1913). As was pointed out at the time, there had been no increase in the size of the floors to sweep or in the number of spittoons to clean. The session of 1915 managed to function with a material reduction in the number of employes.

<sup>62</sup> From the opinion of the trial judge, rendered in the Marion County Criminal Court, Dec. 17, 1914.

<sup>64</sup> Supported in *Cliff v. Parsons*, 90 Iowa 665; in *Cook v. Auditor-General*, 139 Mich. 48, the court specifically refused to take the position that payments to legislative employes made by resolution and properly endorsed were illegal although contrary to a clearly expressed statute.

<sup>65</sup> Sec. 28, Art. V.

<sup>66</sup> Montana House Journal, 1915, p. 65.



framed or amended as to authorize their employment.<sup>67</sup> Such a law, it is urged, is binding on the houses to the same extent as on a private individual, and can be repealed or disregarded only by the concurrent action of the two houses and the approval of the governor.<sup>68</sup> Contrary to the action of Montana, the legislature of Colorado fulfilled the constitutional requirement that no payments should be made to employes except those appointed in pursuance to law, by specifying by statute the number and rate of compensation. The Supreme Court has held that, in view of this, the houses cannot by separate resolution fix the compensation of employes at a rate higher than that allowed by existing law. The constitutional prescription is a mandate to the legislature to fix it by law, since it is a provision essential to the protection of public rights, and when such a law has been enacted the legislature cannot ignore it.<sup>69</sup>

The number of times the question of the right of the legislature to employ clerks and assistants has been considered by the courts is small, and it is not possible to cite precedent that is conclusive, yet the view that the legislature in this connection is at all times a law unto itself is more in keeping with the decisions of the courts concerning statutes seeking to control other phases of legislative procedure. Granted that the legislature has the right under the constitution to employ assistance that it may discharge its business most expeditiously, it is difficult to see how it can be restricted by self-imposed law. Any other view extends the control of the executive, whose approval would be necessary to a removal of the restriction, beyond mere approval or disapproval of the legislative product to a share in the internal management of the business of the houses, a result certainly never anticipated by the framers of our state constitutions.<sup>70</sup>

<sup>67</sup> *State v. Wallichs*, 14 Neb. 439. Yet the Legislature has not felt itself bound, and in a number of cases has exceeded the statute limit. (Statement of Mr. A. E. Sheldon, Director Nebraska Legislative Reference Bureau.)

<sup>68</sup> *State v. Auditor-General*, 61 Mo. 229. See also *Walker v. Coulter*, 113 Ky. 814, although here the constitution strictly specifies the number of employes and the point under discussion was not necessary to the decision.

<sup>69</sup> *People v. Spruance*, 8 Colo. 307.

<sup>70</sup> The legislature's independence in matters relating to employes is somewhat restricted by constitutional prohibitions upon increases of compensation after the service is rendered. See *Robinson v. Dunn*, 77 Cal. 473; *State v. Williams*, 34 Ohio St. 218; *State v. Chatam*, 21 Wash. 437.

Recently the Illinois Supreme Court refused to allow an appropriation for

In the light of the foregoing the following generalizations may be made. If the legislature has the power to act under the constitution (the power may be inherent in the very nature of the legislative function), it possesses full competence to decide what methods of procedure it will employ. The courts will review the right to exercise the power but will leave the application of constitutional directions concerning procedure in the hands of the legislatures themselves. If the legislative bodies are determined to evade checks placed in the fundamental law, the evasion must appear affirmatively on the journals. If legislatures are remiss in interpreting constitutional provisions the remedy "which the constitution provides by the opportunity for frequent renewals of the legislative bodies is far more efficacious than any which can be afforded by the jury." In the last analysis we must look to the legislature itself to give living content to any rules, constitutional or otherwise. This does not signify, however, that constitutional requirements concerning procedure are without effect. Usually they are respected to the letter even if the spirit be not always fulfilled, and where the intention of the framers is not accomplished there is ordinarily a good practical reason for the failure to do so.

telephone fees of members or for the mileage of members. It denied that these expenses were incidental to the discharge of the legislature's business. (*Fergus v. Russell*, 270 Ill. 304 and 626.) Nevertheless it may be argued with reason that the telephone is as necessary as are pages and stenographers.

## CHAPTER II

### THE ORGANIZATION OF THE HOUSES

The first step in the organization of a new legislature is of necessity the preparation of a temporary roll. If the certificates of the members-elect are all regular and uncontested this is a mere clerical duty. But if the majority of one party is small and doubtful, and conflicting election certificates have been presented, the power to draw up the roll is open to abuse, since it is highly desirable to either party to construct an organization which will favor its interests in the contests which are to follow.

#### THE MAKE-UP OF THE ROLL

Contrary to the practice of Congress, the legislatures of many states have taken the make-up of the roll out of the hands of the clerk of the preceding session and placed the duty upon the secretary of state, who certifies to the correctness of the list of names which he presents. He is presumed to be a more responsible officer than the clerk and any member named on the roll is entitled to his seat until action is taken unseating him.<sup>1</sup>

In other states the temporary clerk calls the roll of counties and members-elect present their certificates as their districts are called.<sup>2</sup> Or the duty may be left with the clerk of the last session, with the specification that only members holding proper election certificates shall be placed on the roll.<sup>3</sup> In Colorado and Nebraska permanent organization is delayed until the report of a committee on credentials<sup>4</sup> but this does not destroy the advantage gained by the possession of a majority on the temporary roll or the importance

<sup>1</sup> Clerk's Manual, New York Assembly (1916), p. 509, and Assembly Journal, 1914, p. 30 *et seq.* Also Legislative Decision No. 25, Michigan Manual (1915), p. 645. Members are, with few exceptions, sworn according to this temporary roll. See journals of any state.

<sup>2</sup> Fixed by statute in California, Indiana, Minnesota, Montana, Ohio and Texas.

<sup>3</sup> Fixed by statute in Arizona, Iowa, Maryland, Nebraska and North Dakota.

<sup>4</sup> Colorado, Annotated Statutes ¶ 2897; Nebraska, Revised Statutes (1913) ¶ 3742-3743, and the Blue Book (1915), p. 470.

of the clerk's power in making up the same. With these two exceptions, persons appearing on the roll upon which the house is organized take the oath and participate in the permanent organization, and remain members until removed by the house. In New Hampshire, however, no name is to be entered for any district from which conflicting certificates of election have been returned.<sup>3</sup>

The method of making up the roll is usually prescribed by statute. In Illinois, however, it has been left to custom, and confusion sometimes results. At the organization of the 1915 session the president of the Senate of that state refused to admit the roll prepared by the secretary of state, which would have deprived his party of control, on the ground that no statute made this the official roll. The parties were evenly matched, and, as no roll could be agreed upon, permanent organization was delayed for more than six weeks, or until a special committee had completed a recount in the doubtful districts.<sup>4</sup>

### CONTESTED ELECTIONS

One of the first questions to engage the attention of the houses is the disposition of contested elections. As shown in the chapter above, this right is exclusive with each house and perhaps no power has led to graver abuses. In no state are such contests dealt with in a systematic way, nor have party organizations hesitated to strengthen their position by high-handed practices in unseating members. Where no immediate decision is necessary to party advantage the contest may drag on for weeks. In 1915 the Assembly Committee on Privileges and Elections in New York spent in two election cases \$9,075.98 for hotel expenses alone.<sup>5</sup> In 1914 a contested election before the same body was not decided until the day of adjournment, and the duly elected representative served but part of one day. Thus two men drew full salaries for the same office.<sup>6</sup>

Inasmuch as control by the legislature of the election of its members is no longer necessary as a defense against executive encroachment, England has outgrown the conviction that the power

<sup>3</sup> Public Statutes, Chap. 4, Sec. 6.

<sup>4</sup> Illinois Senate Debates (1915), pp. 4, 5, *et passim*.

<sup>5</sup> Itemized account approved by the speaker, *New York Times*, Jan. 26, 1916.

<sup>6</sup> Report of the Citizens' Union Committee on Legislation for 1914, p. 4.

of decision in contested cases is an inviolable parliamentary privilege, and since 1868 such cases have been referred to the courts.<sup>9</sup> But the American courts will not permit our legislatures to part with this jurisdiction. The constitution of Pennsylvania directs that the trial of contested elections of members of the General Assembly shall be by courts of law<sup>10</sup> and in conformity to this the legislature designated the courts and the manner of holding trials. The Supreme Court held, however, that by this the legislature was not deprived of the power, granted in another section of the constitution, of judging of the election of its own members. The purpose of the constitution and the statute was merely to provide a method of procuring and presenting to the respective houses evidence necessary for an intelligent decision. Final judgment must rest with the house.<sup>11</sup>

More recently in two important cases the power of the courts to render even advisory opinions has been denied. The Corrupt Practices Acts of Massachusetts and of Montana provided that cases of contested elections of members of the legislature should be heard by the courts upon the presentation of proper petitions. The judge was to return the findings to the secretary of state to be transmitted to the house for which the contestant was a candidate, and decrees were to be entered in favor of the one shown to be lawfully elected. But in reviewing these provisions the highest courts of both states held that if it was their purpose to give final jurisdiction to the courts, they were void as invading an exclusive prerogative of which the legislature could not divest itself. Moreover, if the decree of the court was to be advisory merely, a non-judicial duty was imposed on the courts. They were made nothing other than the agent of the legislature, and their opinion at best could be only tentative. In accordance with the principle of the separation of the powers of government such use cannot be made of the courts.<sup>12</sup>

<sup>9</sup> See Parliamentary Debates, July 6, 1906, where a danger is disclosed in the English system. A strong element in Commons wished to drive a justice to resign because of his conduct in an election case. The Prime Minister's indictment of the old method prior to 1868 could be applied word for word to present conditions in our state legislatures.

<sup>10</sup> Art. III, Sec. 17.

<sup>11</sup> *In re Contested Election of McNeill*, 111 Pa. St. 235.

<sup>12</sup> *Dinan v. Swig*, 112 N. E. 91 (Mass. 1916); *State v. District Court*, 50 Mont. 134 (1914).

Thus it is seen that escape from the almost farcical proceedings before election committees by following English example is rendered impossible through our unique doctrine of the relation of the departments of government.

### SELECTION OF EMPLOYEES

The selection of legislative employees is the third important step in the business of organization. While the needs of different legislatures vary it is generally admitted that, were the selections made on the basis of skill and training, fewer men would do the work more efficiently. The general report from the states is that clerks and employees are chosen solely on grounds of political expediency. Indiana follows the happy plan of making appointments for half the session, employing a new corps for the last thirty days. The following indictment by the Governor of Idaho could apply quite generally:

There has been a general increase in the expenses of succeeding legislative sessions out of proportion to the increase in membership. Previous legislatures have placed upon the pay rolls many more employees than were strictly necessary in the transaction of their legitimate business. Much higher salaries have been paid than would have been necessary to secure similar services by any corporation or individual.<sup>12</sup>

Two years later Governor Clark of Iowa arraigned the legislature in more severe language. Much of the money, he asserted, which was expended for legislative "help" was "pure, unadulterated graft." A dozen doorkeepers were employed where none was needed and clerks sat around the chambers in luxurious ease. The system was reprehensible and indefensible, and he called upon the General Assembly to reform.<sup>14</sup> In the Missouri House it is the custom to allow each majority member to name one clerk. Thus the number of employees bears a strict ratio to the size of the party majority.<sup>15</sup> In Indiana it has been estimated that one-third of the employees could do the work.<sup>16</sup>

<sup>12</sup> Message to the Twelfth Legislature (1913).

<sup>14</sup> Biennial Message of the Governor (Iowa), 1915.

<sup>15</sup> *Kansas City Times*, January 9, 1913. At this session the Democratic majority was the largest in history and approximately 120 clerks were engaged.

<sup>16</sup> Statement of Legislative Reference Bureau in reply to questionnaire, of Nebraska Legislative Reference Bureau, 1913.

Wisconsin has solved the problem of legislative help by adopting the civil service principle under the direction of the chief clerk and the sergeant-at-arms of each house, who make the selections from an eligible list furnished by the civil service commission of the state.<sup>17</sup> The number of employes has likewise been reduced to the minimum necessary to carry on the work with maximum efficiency.<sup>18</sup>

The officers and employes may be chosen by the house, as is done in Ohio and Pennsylvania,<sup>19</sup> but it is more usual for the house to elect only the more important officers and to delegate to the speaker or the clerk or the sergeant-at-arms the selection of a host of minor officials.<sup>20</sup> When the power of appointment to desirable positions with nominal duties is lodged with the speaker his position of leadership is strengthened. In Massachusetts the sergeant-at-arms, who is an officer of both houses and appoints numerous minor officials, possesses a great deal of patronage and is a powerful man.<sup>21</sup> Sometimes the selection of the rank and file of employes is entrusted to a committee, not infrequently referred to as the "plunder committee" whose nominations are accepted by the house.<sup>22</sup>

Where the personnel of members changes as rapidly as in the state legislatures the securing of expert help is of prime importance. An experienced clerk and a skilled assistant may be instrumental in bringing system and order into an otherwise chaotic body of inexperienced legislators. To this end permanency of tenure and a graduated order of promotions are absolutely essential. Such a simple reform would result speedily in an improved legislative product, whereas the prevailing situation makes one or two overworked individuals responsible for the legislative routine while a great number of other employes bask in idleness.

It may be noted here that statutes regulating the manner of organization or method of selection of employes have no binding power, should the house choose to ignore them; and the point of order, that the house is proceeding contrary to law, will not

<sup>17</sup> Wisconsin Statutes, Chap. X, Sec. 111g, and House Rule 9, and Senate Rule 93.

<sup>18</sup> Statement from Legislative Reference Library.

<sup>19</sup> Of course the nominees are selected by a "slate committee."

<sup>20</sup> For example, New York and Massachusetts.

<sup>21</sup> Frothingham, "A Brief History of the Constitution and Government of Massachusetts," p. 97.

<sup>22</sup> For example, Indiana H. J. 1915, p. 73; Kansas and Washington also.



usually be entertained. For this the states have Congressional precedent.<sup>22</sup>

It is usual to adopt the rules of the last session with perhaps minor changes reported by the rules committee. Until the rules are adopted the house operates under general parliamentary law. On these grounds a motion for the previous question was entertained in the New York Senate and is the only instance on record of such a motion being considered by that body.<sup>23</sup>

The organization of each house completed and the fact sent by message to the other house, it is customary to appoint a joint committee to wait upon the governor to inform him that the legislature is ready to proceed to business.

<sup>22</sup> See 1 Hinds 82, 242, 245.

<sup>23</sup> Clark's Manual, 1916, p. 650.

## CHAPTER III

### INTRODUCTION OF BILLS

It is generally recognized that our present legislative machinery was not designed to meet the heavy burdens placed upon it in the form of hundreds of measures introduced each session. Legislative channels are congested by countless bills of individual members, and no satisfactory methods have been devised to stem the torrent. Indeed it is not strange that a procedure developed to secure deliberation for measures introduced by the tens should prove inadequate when measures are presented by the thousands. At a time when legislation is increasing rapidly in complexity and technical detail there exist no limits, except the self-imposed restrictions of individual members, to the number of bills which a house must consider.<sup>1</sup>

#### EARLY METHODS OF INTRODUCTION

The right of a member to demand consideration for a legislative proposal has not always been so clear as at present. In the early days of our state legislatures, following the practice of Parliament, bills could be introduced only by motion for leave or by order of the house, and in either case action by a committee was necessary.<sup>2</sup> A member seeking to introduce a bill would, after one day's notice, state to the house its general nature and move for leave. Leave being granted, a committee, of which the proponent was always made chairman, was appointed to prepare and bring in the bill.<sup>3</sup>

<sup>1</sup> See Bulletin of Nebraska Legislative Reference Bureau, "Legislative Procedure in the Forty-eight States," pp. 10-11, for a table of number of bills introduced each session from 1909-1913. Each successive session shows an increase.

<sup>2</sup> Clark, "Assembly Manual for New York" (1816); Sutherland, "Legislative Manual for Pennsylvania" (1830). See also the journals of New York, Pennsylvania, Massachusetts and Virginia for about the year 1800. For a complete discussion of this method see *Debates of Congress*, 1 Sess., 20 Cong., 823-827.

<sup>3</sup> Earlier practice in Pennsylvania had allowed a member to introduce a bill in place. The rule was, "Any member may read a bill in his place, and by permission of the house present it to the chair; it shall then be proceeded upon as if presented by a committee." (Rule 14, Pa. H. J. 1805, p. 28.) Yet the right was

Closely related to the above method was the order of inquiry, which was simply an order to a committee to consider the expediency of legislating along a certain line.<sup>4</sup> It was grounded on a presumed lack of knowledge and was an investigation started by the legislature to secure information which could not otherwise be obtained.<sup>5</sup> At one time generally employed,<sup>6</sup> this form survived in Massachusetts alone, where it was not abolished until 1893.<sup>7</sup> By that time it had become the normal way of introducing measures for consideration, but having lost all traces of its original purpose, it remained only as a cumbersome method of initiating legislation. Committees were charged with preparing measures when, because of the great increase in the number presented, their normal function was to sift measures, and great delay resulted.

A petition often formed the basis of a bill in the earlier days. Indeed the chief work of standing committees was the consideration of petitions. Originally, a committee reporting favorably recommended that a select committee be appointed to bring in a bill along the lines of the petition. Reference of a petition, however, soon came to confer authority to introduce a bill formally, although theretofore the committee in possession of the petition had not been able to report by bill unless empowered to do so by a special resolution.<sup>8</sup> Introduction by petition is still common in some New Eng-

restricted by requiring leave to be obtained. An examination of the journals will show that but few were introduced in this manner and that practically all bills were presented by a committee pursuant to order. So strong was the feeling that measures introduced should first be subjected to review that later the privilege of introducing bills in place was withdrawn, and the colonial practice of introduction solely by committee was restored.

<sup>4</sup> In Congress it was "a most common form" for measures other than those initiated by petition. (Debates of Congress, 2 Sess., 19 Cong., Col. 776; and statement of Mr. Polk, Speaker, Debates of Congress, 2 Sess., 24 Cong., Col. 1340. See also the journals of the time.)

<sup>5</sup> Report of the Special Rules Committee, Massachusetts House Documents, No. 5, Session of 1893.

<sup>6</sup> See journals of the legislatures of the first quarter of the nineteenth century, in particular the journals of Pennsylvania.

<sup>7</sup> Massachusetts S. J. 1893, p. 155. Today an order of inquiry merely authorizes an investigation and not the introduction of a bill. (Ruling of the Speaker, H. J. 1898, p. 456.)

<sup>8</sup> See journals of Pennsylvania, Massachusetts or Virginia about 1800. No committee was authorized to report a bill unless granted by resolution the privilege "to report by bill or otherwise." In course of time this was granted to cer-

land states and is required in Massachusetts for all private bills. The petition, however, must be accompanied by a draft of the bill, and although it is in itself a mere survival, only a fraction of even the general measures in Massachusetts are introduced without it.<sup>9</sup> The point of order that a bill is broader in its scope than the petition will be entertained.<sup>10</sup>

The cumbersome method of appointing a committee to prepare and bring in a bill gave place, as the pressure of business increased, to introduction of the complete measure from the floor, upon leave, and after one day's notice.<sup>11</sup> At first debate might occur upon the motion for leave but it soon became common to grant leave to all by unanimous consent. Thereupon introduction at will without the formality of securing leave came to be permitted.<sup>12</sup>

From this brief historical survey it is clear that originally the privilege of a member to introduce measures for consideration was not the unregulated right which it is today. The prevailing doctrine was that the consent of the house, or at least of a committee thereof, must be gained before a bill could be admitted for consideration, and in granting assent real deliberation was involved.<sup>13</sup> The

tain standing committees for the session, and later it was extended to all by a blanket resolution. Afterwards it was incorporated in the rules.

<sup>9</sup> Massachusetts Senate Rule 22, House Rule 29.

<sup>10</sup> Notes on Rulings, Massachusetts Manual 1916, p. 634. The method permits measures to be proposed without a member being recognized as sponsor, for although some member must endorse each one, he is not thereby made advocate for it. (Frothingham, "Brief History of the Constitution and Government of Massachusetts," p. 93.)

<sup>11</sup> As early as 1808 introduction by members from the floor was permitted in the New York Senate. When first recognized by the rules the method was employed but little, the great bulk of proposed measures coming in by petition.

<sup>12</sup> In 1843 in Pennsylvania; House Resolution No. 31. In 1868 the New York Assembly adopted the order of introduction of bills on call of counties (A. J., p. 94). Several states still adhere to introduction by leave in which case one member can compel a motion to grant leave.

<sup>13</sup> The question was fully discussed in Congress in 1827 when a proposal was up to amend the rules to make it clear that no bill should be introduced except upon the report of a committee, the old rule being so worded as to lead some to fear that bills might be brought in without committee action thereon. The reason given why the House usually admitted notice of intention to introduce a bill was that the judgment of the committee which would report on its expediency would be accepted since the committee exercised a discretion in the matter. In the course of the debate Mr. Archer said: "But if a member of the House may,

ing forces of the house were thus applied before legislative proposals assumed the dignity of bills. Bills were introduced as the result of committee deliberation and, with the exception of consideration in the committee of the whole, were not usually sent again to a committee.

### PERSONAL RESPONSIBILITY OF MEMBERS FOR INTRODUCING MEASURES

In our legislatures, where nothing like a responsible ministry has been developed, action must be inaugurated by the private member. With the exception of appropriation bills, measures are rarely introduced by committee action. Members are proverbially careless about exercising their right. They are not impressed with the value of the legislature's time nor are they conscious that, by their failure to select carefully what measures they will propose, they render deliberation upon them a mockery. A recent investigation carried on among the members of the Nebraska Legislature revealed that only 40 per cent of the bills introduced were the result of the members' own initiative or study of the subject. Sixty per cent were introduced at the request of individuals or societies.<sup>14</sup>

Permitting the words "by request," to be endorsed upon a bill, as is done in many states, favors the introduction of trivial measures by relieving the proponent of responsibility. The practice reaches a real abuse in Missouri, where in 1915, 15 per cent of the House bills were "by request." Very rarely in any state do such measures become law. Generally they are never reported favorably from committee. In Pennsylvania such an endorsement means the death warrant of a bill, as members argue that there must be something wrong if the sponsor is unwilling to identify himself with it.<sup>15</sup>

we have, bring in any bill which suits his particular views, and that bill must of necessity pass immediately to its first and second reading, all sound legislation would be at an end." (*Debates of Congress 1 Sess., 20 Cong., Col. 823 to 827.*) Cited by Chester Lloyd Jones, *Proc. A. P. S. A.*; 1913-14; p. 191.

<sup>14</sup> Bulletin of the Nebraska Legislative Reference Bureau, "Legislative Procedure in the Forty-eight States," p. 9.

<sup>15</sup> Statement of Mr. Scott, Chairman of Committee on Committees, Penna. House, 1913. Illinois and Kansas are notable offenders. The Illinois Voters' League strongly urges prohibition of the practice. (*See Bulletin of December 20, 1914.*) The rule in the Washington Senate is that such bills are not to be printed unless by special order.

The rule that no member shall introduce a bill which he is unwilling to defend and support personally on the floor, although difficult of enforcement, is a good one and should be followed conscientiously.<sup>16</sup> Nevertheless bills are often dropped in "sight unseen." For example, a representative lately confessed that he did not remember who had handed him a bill of far-reaching effect which he had introduced, except that he believed that it had been a woman.<sup>17</sup>

Either carelessly or through a desire to be identified with popular legislation, members introduce many duplicate measures. In the 1913 session of the Michigan Legislature, nine "blue sky" laws were introduced.<sup>18</sup> The same year 112 bills were introduced in duplicate in the Nebraska Legislature, and some even in triplicate, one being introduced twice by the same senator and once by a member of the House.<sup>19</sup> Naturally if there is a healthy representation of two parties, both will strive to introduce bills on important subjects; but attempts to facilitate passage by introducing identical measures in both houses are more common and less easy to defend. Legislative reference bureaus have rendered important service in urging members to combine measures and in calling attention to duplicate bills.<sup>20</sup> The rules of California permit the committee on engrossment to substitute a bill of the other house identical with one on their own calendar,<sup>21</sup> and in Oregon a committee exists to pass on all bills before printing and thus avoid duplication.<sup>22</sup> For

<sup>16</sup> This is Nebraska House Rule 34.

<sup>17</sup> *Indianapolis Star*, March 2, 1915.

The following colloquy over a bill up for final passage took place at a recent session of the Illinois Senate.

Mr. Dailey: "What is the purpose of the bill?"

Mr. Meeker: "I don't know; the bill was handed to me."

Mr. Dailey: "You are merely the foster-father?"

Mr. Meeker: "Yes, I am the medium through which the bill was introduced."

It may be added that the bill received a majority of the votes of those present but failed to receive the constitutional number and thus failed. (*Senate Debates* for 1915, p. 1130.)

<sup>18</sup> Reply to questionnaire of Nebraska Legislative Reference Bureau.

<sup>19</sup> Statement from the Nebraska Legislative Reference Bureau.

<sup>20</sup> The South Dakota Legislative Reference Library reports particular success along this line.

<sup>21</sup> Assembly Rule 9; Senate Rule 3.

<sup>22</sup> Statement in reply to Nebraska Questionnaire, 1913.

the same purpose the printing committees of the Washington houses are instructed to scan all bills.<sup>24</sup>

### RESTRICTIONS UPON THE FREE INTRODUCTION OF MEASURES

The increasing number of bills presented has led to discussion as to the feasibility of establishing some form of censorship upon their introduction. But as brought out by the Massachusetts committee to revise legislative procedure, the duty of the censor would necessarily be more than clerical. Consequently it could not be delegated to anyone outside the legislature, although it is unlikely that any group of members could exercise any material power of selection without incurring the dislike of their colleagues and becoming the victims of political scheming.<sup>25</sup> A proposal, recommended by a joint committee of the Massachusetts Legislature in 1910,<sup>26</sup> designed to sift measures by limiting the number one member might introduce, did not meet with the favor of the two houses, so much as they were unwilling to restrict their present unlimited right. Any innovation with this purpose in view is apt to run counter to the accepted belief that the channel should at all times be kept open in order that the overtures of the most humble citizen may easily attain legislative consideration.

There are numerous provisions of one kind or another limiting the time in which bills may be introduced, but their purpose is rather to protect against hasty legislation than to restrict the quantity. In two states, however, rules have been adopted designed to increase the number which each member may propose. Introduction of bills in the Georgia House is in order but three days a week, and a member can present but one bill of a general nature each day.<sup>27</sup> In Illinois a member may introduce three bills a day during the first three weeks; thereafter on Tuesdays only.<sup>28</sup> But the efficacy of these provisions is greatly weakened by the custom of granting unanimous consent to introduce bills at any time.<sup>29</sup>

<sup>24</sup> *Ibid.*

<sup>25</sup> Report of the Massachusetts Committee to Revise the Rules, 1915, p. 29.

<sup>26</sup> *Ibid.*, p. 28.

<sup>27</sup> House Rule 40.

<sup>28</sup> House Rule 18.

<sup>29</sup> Mr. E. D. Shurtleff, member of the Rules Committee of Illinois House, states that he has never known such consent to be refused.

From California comes the latest novelty in the form of a constitutional



## PRESENT-DAY METHODS OF INTRODUCTION

The procedure followed in introducing a bill varies somewhat in the different states. In a few the rules require that the old formality of asking for leave be carried out.<sup>29</sup> In others introduction by roll call of counties is still observed.<sup>30</sup> Under the latter procedure a member rises as his county is called and notifies the speaker that he has a bill to introduce. A page then hurries a copy to the clerk who reads the title to the house.<sup>31</sup> In Illinois bills are introduced upon a roll call of members.<sup>32</sup> The more general practice permits members to secure recognition from the presiding officer when the house is under the proper order of business, and to send the bill to the clerk who reads the title. This constitutes the first reading. If, however, the constitution requires three readings in full, a pretense of reading the text is made.

To escape the useless waste of time involved in the above procedure, several states, after the example of Congress, provide a box in which bills are deposited,<sup>33</sup> or have required that they be filed

amendment offered in a resolution to the Assembly. Bills are to be presented to the Supreme Court before the legislature convenes, which shall render an advisory opinion as to their merits. The number which members may initiate after the session opens is greatly restricted. (Assembly Constitutional Amendment, No. 57, Feb. 3, 1913.)

The effect of California's first "split session" was an increase of over one thousand bills presented. The first thirty days were largely devoted to introduction of measures. (Statement from State Library to Nebraska Questionnaire 1913.) But in 1915 the number swung back to normal. (Key to Chaptered Laws for 1915.)

<sup>29</sup> True of Connecticut, Delaware, Iowa, Louisiana, Nebraska, and New Jersey Senate.

<sup>30</sup> Georgia, Indiana, Kentucky and Ohio.

<sup>31</sup> Hughes, "Guide to Parliamentary Practice in Ohio" (1913). This follows the early practice of Congress when motions for leave or resolutions of inquiry were introduced upon a call of the states. Debates of Congress, 2 Sess., 24 Cong. Col. 1341.

<sup>32</sup> House Rule 18, and "Law Making in Illinois," pamphlet issued by Illinois Legislative Reference Bureau.

<sup>33</sup> Maine, New Hampshire House, New York, North Carolina Senate. In 1914 New York adopted the requirement that before a bill is placed in the box it must be stamped by the clerk to show that it was presented personally by a member. This was to prevent bills from being dropped in by other persons, chiefly clerks.

beforehand with the speaker or clerk.<sup>34</sup> Thus bills receive their first reading and reference to committee one day after they have been presented to the house, the speaker being given time to select the appropriate committees.<sup>35</sup> Otherwise his reference is the result of a snap judgment. The reading of titles on introduction and oral reference by the presiding officer, consumes precious time. The whole order of business is gone through in the most perfunctory manner. Members pay no attention, relying upon the printed journals or calendars to learn all they want to know. And inasmuch as the printed journal of the day's proceedings appears the next morning there is no reason why introduction and reference should consume any time of the house whatever. Notice in the journal would be sufficient and, where no constitutional obstacle prevents, following the practice of Congress, could be counted as first reading.

It is required by the constitutions of nine states that notice of intention to introduce a private or local bill be published,<sup>36</sup> and the legislative law of seven other states requires that notice be published or served.<sup>37</sup> In Massachusetts and South Carolina private bill legislation must be founded upon petition,<sup>38</sup> and thus is retained a trace of the ancient practice when all legislation was based upon petitions for redress of grievances. In this connection it has been urged that a return to the practice of initiating private measures by petition and the numbering of them in a series distinct from public bills, would prove the first step towards developing a special procedure in private and local matters.<sup>39</sup> This is indeed a consummation devoutly to be wished. Since a bill for the particular benefit of certain persons or of a special locality may prove injurious to others, the passage of such a measure involves a judicial inquiry

<sup>34</sup> Minnesota, Pennsylvania, and Virginia.

<sup>35</sup> New York Assembly Rule 6; Pennsylvania House Rule 10.

<sup>36</sup> Index-Digest of State Constitutions. They are: Alabama, Arkansas, Florida, Georgia, Louisiana, Missouri, Oklahoma, Pennsylvania and Texas. North Carolina and New Jersey simply require notice before passage.

<sup>37</sup> Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and West Virginia. Connecticut, Maine, New Hampshire and Rhode Island require publication before the beginning of the session.

<sup>38</sup> Massachusetts Senate Rule 15, House Rule 31. Code of South Carolina (1912) ¶ 34-38.

<sup>39</sup> See article by J. David Thompson, "An Analysis of Present Methods of Congressional Legislation," *Proceedings A. P. S. A.*, Vol. X, p. 168.

and determination, rather than a decision on public policy. Recognizing this fact, the English Parliament treats it very much as a lawsuit would be treated, and the preliminaries attending its introduction closely resemble the pleadings in a civil suit. We have, however, made but feeble progress in dealing with private bill procedure, nor has the mere provision that they be accompanied by petitions availed anything in Massachusetts. If the petition were required to set forth the scope and object of the bill and opportunity were given for adverse interests to file a counter petition something approaching a civil pleading would be attained. These claims and counter claims could then accompany a bill throughout its legislative progress.<sup>40</sup> South Carolina has gone so far as to require that the petition must set forth the merits of the case and why the purpose cannot be accomplished by general law, and a statement that all parties known to be concerned have had the requisite notice must be included.<sup>41</sup> Connecticut statutes provide that petitions of an adversary nature must be accompanied with a citation to the adverse parties to appear, and twelve days notice must be given before the day of appearance.<sup>42</sup> School fund petitions are returnable a month before the session opens and are heard by a special commission which reports to the General Assembly.<sup>43</sup>

<sup>40</sup> Recommended by the Governor's Commission of New York (1895). See New York Assembly Document No. 20, 1896.

<sup>41</sup> Code of South Carolina, *supra*.

<sup>42</sup> General Laws of Connecticut (1902) ¶ 7.

<sup>43</sup> *Ibid.*, ¶ 15.

The procedure which promoters of private bills in Parliament must observe before application is made are given in the Standing Orders of the House of Commons, Part II. They exist unchanged today as summarized by May, "Parliamentary Practice," pp. 679-684. It will be seen that petitioners must furnish complete information for the guidance of the committee which is to carry on the investigation. Proof that all conditions have been fulfilled must be exhibited to one of the Examiners of Petitions for Private Bills, who are officers appointed by the Speaker. (S. O. No. 2.)

The Canadian legislatures have followed the English precedent. The rules of the Ontario Legislature, which have served as models for the western provinces, specify in detail what the petition shall contain and what additional matter shall be deposited with the clerk. The Committee on Standing Orders reports on the sufficiency of the notice, and the clerk certifies that the necessary documents have been deposited with him. No motion for the suspension of these rules is entertained unless reported by the Committee on Standing Orders. (Rules of the Ontario House, 51-59.)

In view of the meager information conveyed by the title there has been some agitation in favor of requiring an explanatory note to accompany each bill on introduction. New Jersey adopted a rule which reads: "Each member when introducing a bill shall submit with each copy a statement setting out the objects proposed to be accomplished by its enactment and the localities or persons the bill will affect, which statement shall be referred to the committee with the bill."<sup>44</sup> These statements are pasted on the printed copies of the bills in the hands of the members and, although not considered an integral part of these documents, are very helpful to all. The speaker of a recent session reports that the rule has been particularly useful in cases where the statute proposed contains no language except that which repeals an existing law. Where the proposed legislation affects special localities or individuals the notice informs the reader at once. The Wisconsin House requires a similar synopsis to be presented with the bill, but it does not appear on the printed copy.<sup>45</sup> When it is remembered that the modern legislator has thousands of pages of printed matter before him, much of which is of an amendatory nature, on which he is supposed to assert an opinion, the value of a trustworthy summary of the provisions of the bills on his file is obvious.

<sup>44</sup> House Rule 71. It is optional in the Senate; Rule 36.

<sup>45</sup> Rule 40. Bills in the Illinois Senate sometimes have explanatory statements appended to them but they amount to little. A rule similar to the New Jersey one, proposed by Progressives in the 1913 session of the New York Assembly, failed of adoption. (Journal, p. 17.)

## CHAPTER IV

### COMMITTEES

The real work of the legislature upon which the quality of legislation depends is fundamentally the work of the committees. With them rests the burden of sifting from the innumerable bills presented those worthy of consideration by the whole house, and upon them is laid the duty of revising, amending and presenting these measures in what is usually their final form. They are the only agents, as yet developed in this country for this purpose, upon which responsibility can be lodged.

In our state legislatures a meeting of the body of the house has lost much of its deliberative character. Discussion, save on occasional matters of political importance, has almost disappeared. Members in their desire to get business done are impatient and hostile to speech making, and a too conscientious member who tries to thresh out measures on the floor falls quickly into disfavor. The individual must consequently depend upon the judgment of a committee, inasmuch as pressure of time allows but little parliamentary discussion of even the most important legislation, and it is a physical impossibility for him to read the mass of printed matter prepared for his information and guidance.<sup>1</sup> The committees must therefore be little parliaments in very fact, and it is no exaggeration to say that they are the most important factor in legislative procedure. Nowhere are experience and intellectual power better rewarded than in the detailed discussion possible around a table in a committee room.

#### EARLY FUNCTION OF STANDING COMMITTEES

In the early days when bills passed through the censorship of a select committee before introduction, the need for standing committees was not great. In 1800 there were but seven standing committees in the New York Assembly,<sup>2</sup> and their duty was solely

<sup>1</sup> A prominent member of the Pennsylvania Legislature states that at the close of a session he once piled on the floor the printed matter he had been expected to peruse. The pile was more than four feet high.

<sup>2</sup> Journal of the New York Assembly (1800), p. 35.

to report upon petitions referred to them. If the petition was worthy, the standing committee reported a resolution that a select committee be appointed to bring in a bill. Because of the increasing number of petitions, the standing committees had by 1830 increased to twenty-nine, and had been granted the right to introduce measures based upon petitions.<sup>3</sup> However a bill might be introduced, it went immediately to the committee of the whole for consideration; for even private members' bills introduced on leave without the mediation of a committee escaped reference to a standing committee. If, after debate in the committee of the whole, imperfections remained, a bill might be committed to a standing committee, but such aid was seldom demanded. As, in the course of time, private members came more and more to introduce measures upon their own responsibility, the question of keeping clear the calendar of the committee of the whole became serious. Hence arose the modern practice of referring measures upon introduction to standing committees. Thereafter only select measures ever reached the committee of the whole.

In Pennsylvania it was not until 1813 that standing committees were recognized by general resolution empowering the speaker to appoint them,<sup>4</sup> and it was not until 1827 that they were made a regular institution by the rules.<sup>5</sup> Their chief function was to undertake orders of inquiry at the command of the House, but their power to report by bill had to be authorized by specific resolution. By 1825, however, it had become the custom to grant this authorization by blanket resolution, and by 1830 the right of standing committees to report by bill was embodied in the rules.<sup>6</sup> Repeating the experience of New York, reference to a committee upon introduction became the regular procedure when individual members began to present measures freely from the floor.

#### SELECTION OF COMMITTEES

The appointment of committees is today a principal source of the speaker's power, for the practice of selection of committees by the house has met with negligible acceptance. The Nebraska House,

<sup>3</sup> *Ibid.*, 1830, pp. 37-39.

<sup>4</sup> Pennsylvania House Journal, 1813, p. 10.

<sup>5</sup> House Rules (1827) No. 28.

<sup>6</sup> Sutherland's Manual for Pennsylvania (1830), p. 81.

however, is an exception in that it has a committee on committees whose selections it approves, and the same is true of Utah. Pennsylvania after one trial of this system in 1913, when a strong progressive element sat in the House, has returned to the old method of appointment by the speaker.

Methods of appointment of senate committees differ more widely. In the majority of cases the selection rests, under the rules, with the president, but since in most states he holds his office by virtue of the fact that he is lieutenant-governor and may be of a political faith in opposition to the majority, this prerogative is sometimes denied him. In Oklahoma the constitution prescribes that senate committees shall be elected by majority vote,<sup>7</sup> and in five other states the rules specify that the choice shall be by the senate.<sup>8</sup> In the Senates of Kansas and Nebraska, committees are selected upon the recommendation of a committee on committees. The committees of the Vermont Senate are chosen by a group of three, viz., the president, the president pro tem, and one member elected by the body, but the right to overrule their appointments is reserved. In Connecticut, Delaware, Missouri, and Pennsylvania the selections are made by the president pro tem, who is also the majority leader.

Since the president of the senate is not usually a member of that body, his committee appointments are apt to be dictated by the party leader. Indeed the actual power of selection is so commonly surrendered that a recent attempt of the president of the New York Senate actually to exercise his parliamentary prerogative evoked surprise. Objecting that he had not been consulted regarding certain appointments which he did not approve, he refused to accept the responsibility of promulgating them. The party organization thereupon took the appointing power out of his hands and, having vested it in the Senate, put through the slate as voted in caucus. However, the responsibility for the appointments was lodged clearly where it belonged.<sup>9</sup>

The minority members of committees in New York, Illinois and elsewhere are customarily chosen by the minority leader, the speaker

<sup>7</sup> Oklahoma Constitution, Art. V., Sec. 28.

<sup>8</sup> Illinois, Ohio, Rhode Island, Virginia and Wisconsin.

<sup>9</sup> Albany Knickerbocker Press, January 14, 15, 1915. *New York Times*, January 14, 15, 1915.



being satisfied with exercising his control over members of his own party.<sup>10</sup>

Usually the member first named upon the committee becomes chairman. Because of the loose manner in which committee business is conducted, the chairman exercises an influence greatly in excess of that enjoyed by similar officials in Congress. The power to designate who they shall be is, therefore, highly prized by the speaker. In view of the abuse to which this power may so easily be put, committees should be permitted to choose their own chairmen, as is done in both houses in Rhode Island and Wisconsin, and in the West Virginia Senate.<sup>11</sup>

Few phases of legislative procedure have evoked more criticism than that which vests the committee appointing power in the speaker. Without doubt it renders him a very powerful official, not only because it gives him control over measures placed in the hands of trusted worthies, but because, by granting or denying committee places as rewards and punishments, his position as leader is strengthened.<sup>12</sup> Nevertheless, it is possible that much of this criticism is unmerited in view of the difficulties of apportioning desirable committee berths among aspiring candidates. In addition to due care for party interests, consideration must be given to ability, experience, geographic distribution, et cetera, and regardless of the effort expended, the conscientious speaker is apt to find that his selections contain sinister combinations. The chairman of the committee on committees in the Pennsylvania House of 1913, who figured largely in the reform of the rules at that session, reports that his committee worked night and day in an attempt to distribute places fairly and honestly, yet the result of their labor drew the common charge that corrupt interests had prevailed.

#### NUMBER AND SIZE OF COMMITTEES

In many states the very number and size of committees defeats the purpose of their existence. The energy of members is dissipated

<sup>10</sup> At the 1915 session of the Illinois House the speaker for the first time in years named full committees himself, refusing to recognize any leaders in the badly disorganized minority.

<sup>11</sup> Under the Pennsylvania Rules of 1913 each committee elected its own chairman, but this feature was dropped when in 1915 the legislature returned to the old method of committee appointments.

<sup>12</sup> Illustrations are familiar to all. They appear clearly whenever the selection of a speaker has exposed the party to factional disturbances.

by service on many committees. Meetings must often be scheduled at inconvenient hours and conflicts occur constantly. Amid such circumstances a reduction in number through combination and elimination becomes the first condition of reform. To cite extreme examples: the Iowa House has sixty-one committees, ranging in size from nine to forty members, membership on eight being the minimum for any one representative. In addition to a committee on agriculture of thirty-nine members there are committees on dairy and food, animal industry, drainage, horticulture, and agricultural college. There are nine dealing with different phases of education, in addition to one on educational institutions with twelve members, and one on schools and text books with twenty-eight members.<sup>13</sup> The Kansas House has fifty-five committees. In addition to several useless ones, such as federal relations and immigration, there are six dealing with subjects which could more easily be handled by the committee on agriculture, six dealing with matters of education and five with municipal affairs.<sup>14</sup> The Michigan Senate with thirty-two members has sixty-two committees, fifteen of which could be grouped under one on education.<sup>15</sup> The Kentucky House boasts seventy committees, each member serving on six, and in Georgia members serve on an average of nine. Although, as has been stated, these examples are somewhat extreme, Pennsylvania's average of five places per member is typical of the vast majority of states.

Such an endless multiplication of committees would of course be impossible if it were not that the burden of work is confined to a few of the more important while others meet but irregularly throughout the session. Everywhere the committees on appropriations, judiciary, and municipal affairs will be found crowded with work. Of less importance, although with plenty to do, will be found committees dealing with agriculture, banking, county affairs, education, corporations, railroads, fish and game, and roads and bridges. Then follow the committees whose work is almost negligible. It has been stated by members of experience that twenty-three of the forty-one committees of the Pennsylvania House are of no importance and could readily be abolished. Of the thirty-eight com-

<sup>13</sup> House Rules for 1915.

<sup>14</sup> Rules for 1915.

<sup>15</sup> Rules for 1915.

mittees of the Ohio House of 1915, there were sixteen which considered less than ten bills each out of a total of nine hundred and twelve introduced.<sup>16</sup> In the session of the same year twelve committees of the Vermont House, eleven of the Senate, and six joint committees, received less than ten bills each.<sup>17</sup> Evidently some readjustment is needed. A few committees are overwhelmed; others never meet.

On the other hand, the distribution of business among the joint committees in Massachusetts is much more equitable, only seven of the thirty in a recent session receiving less than forty bills.<sup>18</sup> Vermont attempted reform at the 1917 session by combining sixteen committees into seven, but no attempt was made to relieve the more congested. In Wisconsin the reform has been worked out to its logical conclusions. Senate standing committees have been reduced to five with no member serving on more than one, and the number in the House which consider legislation is now fifteen with a total of but 112 places for 100 members.<sup>19</sup> In Rhode Island, also, members serve as a rule on but one committee.

The advantages of the plan are obvious. Each committee becomes an important part in the legislative system, performing a decent amount of the legislative business. Full attendance at meetings is possible because members are not bothered by conflicting committee schedules, and chairmen do not have to exert themselves to secure a quorum.<sup>20</sup> In those states where capitol space is limited the simple matter of finding rooms for a multitude of meetings is serious, preventing a committee from enjoying permanent quarters.<sup>21</sup> While under a system of few committees there would still be degrees of importance; and experience and capacity would still be rewarded by places upon the leading committees, each would have sufficient work to do. Meetings could be held at regularly scheduled hours when members are fresh for the work. By devoting their whole attention to the business of one committee, legislators could become

<sup>16</sup> Ohio H. J. 1915, pp. 1947 *et seq.*

<sup>17</sup> Report of Joint Committee, 1917, pp. 6, 7.

<sup>18</sup> Report of Joint Committee on Procedure, 1915, p. 36.

<sup>19</sup> S. Rule 20; H. Rule 22. This was accomplished at the 1913 session when the number of committees was cut in half. (Ass. J. pp. 98-99.)

<sup>20</sup> It is a general complaint that committee meetings are not well attended. Congress has the same difficulty.

<sup>21</sup> North Carolina and Vermont report specific difficulty of this kind.

specialists along the lines of their service. Committee proceedings would possess weight and dignity, so sadly lacking in our state legislatures, but without which no deliberation can be a success.

The opposition to a rearrangement along the lines indicated comes from a desire to multiply honors. Representatives are loath to surrender the prestige and perquisites derived from membership on many committees. The recent progressive wave in the Illinois House spent itself when the number of committees had been reduced from sixty-seven to thirty-three, with each member serving on from five to eight,<sup>22</sup> and at the 1915 session of the Kansas Senate a motion to authorize a reduction from forty-one to twenty-one failed without a roll call.<sup>23</sup>

#### REFERENCE OF BILLS

Upon introduction and before consideration by the House, a bill is referred to a standing committee in whose possession it remains until reported back or until the committee is discharged. Except in rare instances the presiding officer designates which committee shall receive the measure. The rules often permit discussion at this point by providing that the question "Shall the bill be rejected?" may be raised, but this never occurs in practice. Sometimes reference does not take place until after second reading, but in such cases second reading usually follows immediately upon first. Consequently nothing is gained by adherence to an ancient practice observed by Parliament, inasmuch as with us the merits of a bill are no longer debated on second reading and afterwards referred to a committee for review of the details.<sup>24</sup> In Arizona and Ohio the bill is printed and on the desks of members before reference.<sup>25</sup>

When bills are referred by the presiding officer immediately upon introduction they are apt to be distributed more or less at haphazard among the various committees. Thus in Vermont, within a period of three sessions, woman's suffrage bills were sent to committees on municipal corporations, internal affairs, temperance,

<sup>22</sup> H. J. 1915, pp. 132-133.

<sup>23</sup> S. J. 1915, p. 4.

<sup>24</sup> In Arizona, Louisiana, Missouri and Ohio the rules provide for reference after second reading, but as the constitutions require readings to be on separate days, reference is delayed one day after introduction.

<sup>25</sup> Arizona House and Senate Rules 9; Ohio, House Rule 73 and Hughes' "Parliamentary Guide."

judiciary, ways and means and grand list.<sup>26</sup> By requiring measures to be filed with the clerk previous to introduction or by allowing a day to intervene between introduction and reference such careless disposition of measures can be avoided.

In at least three states the speaker has been deprived of his power of reference. In Ohio and Virginia members of the House designate the committee, and Maine practice, in keeping with her system of joint committees, provides a joint standing committee whose function is to assign bills to the proper committees.<sup>27</sup> Permitting a member to specify what committee shall consider his bill robs the speaker of a great deal of control over its fate, for the latter is sure to have at least one committee dominated by his adherents. Even if committees are elected by the house his power is large, since his reference is rarely overruled by contest on the floor.

Where joint committees are used as extensively as in Massachusetts and Connecticut the process is a little more involved. Reference by the presiding officer in one house must be confirmed by the other and when such concurrence is refused, it is the usual, although not the invariable practice, for the first house to recede from its position and to pass a resolution agreeing with the new reference. As differences of this sort are quite frequent the reference of the presiding officer is constantly checked up by the other house and his own.<sup>28</sup>

Formal reference by the speaker before the assembled house consumes valuable time and serves no useful purpose. Members pay no attention to this order of business, practically denying themselves the right to review the action of the speaker. Notice of the reference in the daily journal or calendar is quite sufficient, if opportunity is given to move to revise the speaker's action. The rules of the Virginia House require the clerk to refer bills in accordance with the endorsement of the proponent and to enter the fact on the journal. He is then to prepare a daily list of all bills offered with their patrons and references.<sup>29</sup> A member thus learns readily what

<sup>26</sup> Memorandum of Vermont Legislative Reference Bureau, 1916.

<sup>27</sup> This procedure was adopted as an improvement over the old method of concurrent reference.

<sup>28</sup> See Journals of Massachusetts and Connecticut. Maine, as noted above, employs a joint committee on reference.

<sup>29</sup> House Rules 7, 37 (1915). Urged by the Massachusetts Joint Committee in its report on the reform of the rules, 1915, p. 33.

disposition has been made of his measures, for the general confusion on the floor and the sing-song manner in which reference of bills is carried on precludes even the most diligent from profiting by public announcement.

#### COMMITTEE MEETINGS

The efficiency of the committee system may be impaired by inconvenient hours of meeting. Too often the program of the house makes no allowance for the time necessary for the meetings of the committees. As a consequence they frequently are compelled to snatch a few minutes at recess or at the close of the day when all are tired and anxious to get home.<sup>30</sup> Although forbidden by the rules, meetings during a sitting of the house are common toward the end of the session. Morning seems to be the best time for committee meetings for then the members are fresh for the most important part of their legislative duties. The customary hour in Massachusetts is 10:30 a.m. Members accordingly plan to devote their mornings to committee work, which therefore becomes as regular a part of the routine as the session on the floor. Occasionally meetings are held at night but only in order to clear up a crowded calendar.

#### COMMITTEE SCHEDULES

A *sine qua non* of effective committee work is the maintenance of a fixed schedule of meetings, which should be arranged by a responsible person and to which members should strictly adhere. The practice of drawing up a loose schedule at an informal conference of several chairmen provokes conflicts and ends in holding meetings whenever a quorum can be gotten together. Moreover, if choice of time is left to the convenience of the individual members, meetings are most numerous in mid-week, with the consequence that the house calendar is crowded on three days a week with bills reported out, but light on other days. Stated sessions of committees would go far towards keeping each day's business uniform.<sup>31</sup> Furthermore, adherence to a fixed schedule, permitting special meetings only after one day's notice, removes the old evils of "snap meetings."

<sup>30</sup> Discussed in the Bulletin of the Nebraska Bureau, Procedure in the Forty-eight States, p. 17. In Arizona sessions frequently convene to insure presence of members and recess immediately for committee work.

<sup>31</sup> Recommended by the Vermont Special Committee, 1917.

It has not been uncommon for a meeting to be held without the customary announcements, at midnight or other convenient hour, at which only the friends of the measure could appear. Afterwards the bill might be reported out at any time to an unsuspecting legislature and rushed through before the opposition regained consciousness.

Few states have attempted to introduce system into their committee schedules. To do so involves a surrender in part of each committee's freedom of action and is at variance with the feeling that somehow it is beneath the dignity of a committee to allow itself to have a schedule imposed upon it. A measure of progress has, however, been made. In the 1915 session the Nebraska Legislative Reference Bureau submitted a plan of committee meetings which was followed in the main, and in California a committee is ordinarily appointed for the same purpose. The presiding officers of the South Dakota houses, in consultation with others, work out a schedule for the session, and in New York the various chairmen meet with the clerk and arrange a schedule which is carried out quite successfully. In Minnesota a measure of responsibility for arrangement of committee meetings is placed by the rules upon the rules committee.<sup>22</sup> The attitude, however, of most legislators is illustrated by the refusal of the Vermont legislature in 1917 to adopt an elaborate schedule of meetings which aimed to cure much of the old evil.

If committee schedules are to be made a complete success it is best that they be arranged by someone outside the house, who can devote the necessary attention to the details. The smoothness with which the Massachusetts system works is due largely to the effort of the person in charge of the weekly bulletins, whose duty it is to confer with the different committee chairmen and clerks and to arrange a schedule of meetings accordingly.

The value of committee deliberations would be enhanced if they were to proceed according to calendars announced beforehand, but the nearest approach to this innovation occurs in announcement of committee hearings.<sup>23</sup> In Massachusetts this latter serves virtually

<sup>22</sup> Assembly Rule 19 permits variations from this schedule only on one day's notice or a call of the majority.

<sup>23</sup> Committee calendars were urged by the Progressives in the New York Assembly in 1913 but to no avail. (Journal, p. 19.) A resolution offered recently



as a calendar, since custom secures for each bill a public hearing. Frequently in this state committee action is taken in executive session at the time of the hearing although it may be postponed to a certain day, but inasmuch as regular executive sessions are held at stated intervals members know when certain measures are to come before the committee for final action.<sup>34</sup>

It is generally accepted that an opportunity for a hearing should be given on each measure and that notice of same should be published in a way that all interested may have an opportunity to attend. Massachusetts publishes twice a week a bulletin of hearings which is copied by the newspapers, and daily, at 2:00 p.m., a printed list is issued of all assignments for the morrow. Notices are also sent to petitioners. In New York, Illinois and Wisconsin notices of hearings are published in weekly bulletins. In whatever manner the notice may be published, it is the general rule, to which Massachusetts is an exception, that hearings are granted at the will of the party leaders and not as a matter of right. An old trick is to fix a date and, if the legislation involved is unwelcome to the bosses, to postpone the hearing when the advocates of the measure have assembled their forces. Thus the latter are worn out by successive postponements.

The importance of committee deliberation is recognized in eleven state constitutions by provisions requiring committee action on bills.<sup>35</sup> The constitutions of Alabama and Virginia require that the committee be in session to consider the bill. This is the simple principle that no business should be transacted except in regular session with a quorum present, although the rules of but few legislatures mention the matter of a committee quorum at all.<sup>36</sup> Regardless of the constitutional provision in Pennsylvania directing that there shall be a committee report on each bill, committees frequently report without a meeting. The chairman may secure the individual assent of a majority of his committee, or late in the session he may merely rise in the House and ask if any members of

in the Illinois House authorizing notice to committee members of bills scheduled for consideration died in committee. H. J. 1915, p. 342.

<sup>34</sup> Frothingham, *supra*, p. 106.

<sup>35</sup> Index-Digest, State Constitutions, p. 839.

<sup>36</sup> In Illinois, Iowa, Kentucky, Minnesota, New York, West Virginia, and Wisconsin a majority shall constitute a quorum under the rules. In California the decision is left to the committee although it shall never be less than one-third.

his committee are opposed to his measure, and if strong objection does not appear he reports the bill favorably. Against such procedure a point of order that a bill was not considered in committee will not be sustained as it is not competent for the chair to go back of the committee report.<sup>27</sup> Proxy votes are also an evil and where they are admitted it is difficult to maintain committee work on a high plane. New York has recently forbidden their use.

#### COMMITTEE RECORDS

The general custom of "the short roll call," by which measures reported favorably pass the house without an actual division, gives to committees the power of life and death over the vast majority of legislative proposals. Yet final action is commonly taken in secret session. The rules of Ohio and Florida require that all committee meetings be public, but these are exceptions and the procedure in New York is typical. Committees have an open session and an executive session. Different members may appear at the open session and call up bills they have introduced,<sup>28</sup> but at the executive session all outsiders are excluded. Here the discussion is strictly secret and no information concerning it is to be divulged except through the official records.<sup>29</sup>

But to open committee deliberations to the public is not sufficient alone to fix responsibility definitely, and the most common device for turning the searchlight upon the dark recesses of committee action has been to require records of their proceedings to be kept. Committee records in one form or another have been adopted by the rules of one or both houses in fifteen states. The record in Wisconsin is most complete. It includes the time and place of hearings and meetings, the attendance of members, the names of persons appearing before the committee with the firms they represent, and the votes of members on all questions. The chairman is charged with the responsibility for its keeping and a copy follows the bill when reported to the house. It is to be accessible to the

<sup>27</sup> Pa. H. J., 1868, pp. 713-714; 1901, p. 303; and elsewhere.

<sup>28</sup> Some houses require by rule that the sponsor of a measure be notified when it is to come up in committee; others only if the report of the committee is to be adverse.

<sup>29</sup> 1916 Clerk's Manual, N. Y., pp. 530-531. Where such courtesy prevails the necessity for an official report of all proceedings is increased.

public and after the session is filed with the secretary of state.<sup>40</sup> For the sake of making it easily available in order that its purpose may not be defeated, it would be wise to make the record of votes an integral part of the committee's report. It would then appear in the journal and would be preserved for all time. The Progressives of the New York Assembly of 1913 secured the adoption of a rule that the report of the committee must contain the names of the members present when action was taken and their vote, these to be entered on the journal,<sup>41</sup> but as a matter of fact the journal gives only the names of those who favored the report. Ohio and Kentucky accomplish practically the same result by requiring that all in favor of the report sign it, their signatures being spread on the journal. The advantage in recording the votes of committees on the journals is in the wider publicity given them and the greater assurance that they will be preserved, the full minutes being filed in the secretary of state's office.

The experience of the Illinois House demonstrates that merely to pass a rule requiring that committee records be kept may be of no effect. A rule for keeping records similar to the Wisconsin rule was adopted at the 1913 session, but at the end no deliveries were made to the secretary of state as had been provided.<sup>42</sup> At the following session complaint was early made that bills were being reported unaccompanied by a report of the roll call,<sup>43</sup> and it is doubtful if Illinois has even yet succeeded in her purpose. Had the votes of committees been entered on the journals the members could not have avoided going on record, for it would have been in the power of the minority to have made trouble by protesting.

The publication of full committee records will go far towards introducing regularity in committee proceedings, and to this end they should contain more than a statement of the vote upon the report to the house; they should include the votes on every question put to the committee, as the Wisconsin rules provide. By turning light upon committee proceedings the members would be brought

<sup>40</sup> Wisconsin Joint Rule 6.

<sup>41</sup> See Assembly Journal, 1913, p. 19, and Rule 21.

<sup>42</sup> Bulletin, Legislative Voters' League of Illinois, Nov. 20, 1914.

<sup>43</sup> House Resolution No. 53, 1915 H. J., p. 237. This was a resolution to investigate the breaches of the rule but was never reported out of committee. Statement of Mr. Shurtleff of the Rules Committee bears out the above.

to give this phase of their work the attention it deserves. Committees would be unlikely to smother important legislation by failure or refusal to report inasmuch as responsibility could be easily located, but naturally, reform of this nature is steadily opposed by the leaders of the "old guard." For example, when the proposal under consideration was offered at the last session of the New Jersey House it was defeated by the argument of a leader that the power to discharge a committee was sufficient protection against possible iniquities therein.<sup>4</sup>

Committee work can be much facilitated by the employment of expert clerks to look after the drudgery of details. To this end it would be well to organize all clerical assistance to committees under a head clerk of committees with a permanent tenure of office. The success of the Massachusetts system is in part due to the effort expended by the clerks. Although the custom is to appoint the youngest member of the committee as clerk yet his position in the next legislature is dependent upon the ability with which he handles the affairs of his committee, and if he performs his duties with success the way is opened to coveted places later.

#### JOINT COMMITTEES

The system of joint committees, highly developed in Massachusetts, Maine and Connecticut, has produced excellent results. In Massachusetts all except judiciary and ways and means are joint; judiciary usually sitting as a joint committee and ways and means sitting separately as a double check on money bills.<sup>5</sup> With the exception of the latter committee it will be observed from the lists of committees in the three states where the joint system prevails, that the separate house committees are concerned with the business

<sup>4</sup> The Philadelphia Record, Jan. 10, 1917.

NOTE:—The argument presented against a proposal, made during the general revision of the rules of Congress in 1880, that the report of a committee shall include the names of the members concurring, in reality sets forth two good reasons for the system of committee records advocated above. It was objected that a member would have to scrutinize every bill before his committee and come to a deliberate conclusion on it, and that the confidential element in committee action would be destroyed. (*Congress. Record*, 46 Cong., 2 Sess., p. 826.)

<sup>5</sup> All money bills must pass through the individual scrutiny of the ways and means committee of each house, although they may have been acted upon earlier by another committee.

and procedure of each house as a unit in itself, and that matters necessitating concurrent action are delegated to joint committees. The house membership on joint committees greatly exceeds the senate, in Massachusetts the ratio being eight to three. They act and vote, however, as a unit; there is no house rivalry. They are, therefore, joint committees in reality. The rule in Massachusetts is that bills are to be reported back to either branch, having reference to an equal distribution of business between the two, except that money bills must go first to the House. The practice also permits a bill to be referred to two joint committees in turn sitting jointly, as for example, a bill relating to the sale of milk and cream was turned over to the committees on agriculture and public health.

It is not too much to say that the success of Massachusetts, the state in which the committee system is most highly developed, is due in a considerable measure to her joint committees. As pointed out by Professor Reinsch, public attention tends to be attracted to joint committees more than to innumerable committees of both houses.<sup>46</sup> Committee sessions consequently become orderly and dignified. Advocates or opponents of legislation are not compelled to plead their cause twice, and duplication of clerical duties is escaped. Opportunity is given to reduce the number of bills which the houses must consider by combining bills on the same topic into one which embodies the good points of all,<sup>47</sup> and a broader view is possible than can be acquired by committees of a single house.

The objection to the joint committee is that it substitutes a single consideration of a measure for consideration by each house separately, which is the theory of the bicameral system, and on this ground Vermont at the last session abolished all joint committees.<sup>48</sup> But even granting that the spirit of the bicameral system is violated, a question certainly open to argument, it would seem that the rights of both houses would be sufficiently safeguarded if a bill passed by one house were received by the other as with a favorable report unless the committee representation of that house declared them-

<sup>46</sup> Reinsch, "Legislatures and Legislative Methods."

<sup>47</sup> This is successfully accomplished in Connecticut where the work of drafting the substitute is turned over to the clerk of committees, who is an experienced official. The advantages of joint action are admitted also in those states whose rules permit joint hearings. Wisconsin has especially availed herself of this privilege.

<sup>48</sup> See Report of the Committee to Revise the Rules, 1917, p. 9.

selves as opposed.<sup>49</sup> As long as opportunity remained for one body to refer a measure to a committee of their own number the matter of separate discussion would receive all the attention it deserves.

### CONFERENCE COMMITTEES

In case of serious differences between the two houses the good offices of a conference committee are called in.<sup>50</sup> But as a rule, amendments proposed by one house are generally adopted by the other and consequently there are few difficulties serious enough to call for conferences.<sup>51</sup> An examination of the journals will disclose that they are seldom employed until late in the session when the rush of the closing hours is impending; that they are seldom unsuccessful; and that their reports are universally adopted. The situation is therefore charged with possibilities for evil in the opportunity afforded for making trades which are seldom investigated by the house as a whole. The general parliamentary law that the report of a conference committee cannot be amended in either house<sup>52</sup> increases the inclination to accept any compromise the committee may offer. The secrecy of proceedings in the conference is increased by the rule that the minority of the committee cannot report.<sup>53</sup>

<sup>49</sup> Suggested in memorandum of Vermont Legislative Reference Bureau prepared for the Legislature, 1916.

<sup>50</sup> The first constitution of New York provided a most cumbersome method of managing disagreements. The two houses were to meet in a conference managed by committees from both. (Constitution of 1777, Art. XV. Abrogated in the Constitution of 1821.) By this method the secret bargaining which now features the work of committees of conference was avoided.

<sup>51</sup> At the 1915 session of the Illinois Legislature conference committees were used but eleven times and in each case the report was adopted. The Oklahoma Legislature of the same year adopted the reports of the ten conference committees appointed, and in Massachusetts in 1916 nine of the ten conference committees agreed on reports which were accepted. There were only five conference committees in Indiana at the 1915 session. These cases are typical.

<sup>52</sup> Jefferson's Manual § 535. In California enforced by Joint Rule 9, and in Maine by J. R. 13. By a recent decision in Pennsylvania a conference committee report was permitted to be amended by a concurrent resolution. (Legislative Journal, 1913, p. 5230.) Otherwise the formula must be to recommit by concurrent resolution with instructions to amend. The rules of some legislatures allow no other action than acceptance or rejection.

<sup>53</sup> 5 Hinds 6406; Pa. H. J. 1850, pp. 1216-1218.

<sup>54</sup> See Index-Digest, State Constitutions, pp. 838, 842-843.

In order to bring the conference report to the attention of the members, who, as we have seen, are quite willing to accept on faith the compromise presented to them, it is sometimes required that it be printed and on the desks of the members before final vote. This becomes a constitutional mandate whenever the constitution requires the printing of amendments or of the bill in final form.<sup>54</sup>

#### DISCHARGE OF COMMITTEES

A bill in committee is out of the hands of the house until reported back or the committee is discharged. In order to prevent the quiet chloroforming of bills without the committee going on record, possible when bills are retained indefinitely, the rules in twenty-five states provide that the committee must act within a specified time. The time allowed varies from four days in Colorado to twenty-five in Minnesota, although it is unusual to enforce this limit with any rigidity.<sup>55</sup> The rules of the California Senate prescribe that committees shall report "as soon as practicable," and in Kentucky a member may call up a bill "after a reasonable time."<sup>56</sup>

Although it is clear that it should be made easy to place a bill before the house after it has been in committee a reasonable time, to place a bill automatically on the calendar after the expiration of a certain number of days, as is done in North Dakota, robs the committee of legitimate selective power. No bill should adorn the calendar without the favorable action of a committee unless at least 25 per cent of the house are willing to assent to discharge the committee. Thus Delaware permits the discharge of a committee after ten days upon the request of eighteen (about one-half of the House)<sup>57</sup> and New Jersey at the request of fifteen (about one-fourth) upon one day's notice.<sup>58</sup> In Utah, however, the speaker alone is granted this power on four days' notice, and in North Carolina the author may recall the bill after five days in committee.<sup>59</sup>

<sup>54</sup> For experience of Iowa see Shambaugh, "Statute Law Making in Iowa," p. 224. For experience of California see Hickborn, "The California Legislature of 1909," p. 12.

<sup>55</sup> California Senate Rule 34; Kentucky House Rule 37.

<sup>56</sup> House Rule 27.

<sup>57</sup> House Rule 67.

<sup>58</sup> House Rule 3 (Utah); North Carolina House Rule 51. In the senates of Missouri, North Carolina and Ohio and in both houses in Indiana, one member may demand return after a specified time.



It is the right of a house to get measures before it easily. Occasionally, however, the discharge of a committee is made so difficult that it becomes virtual master of the legislation entrusted to its consideration. The rules of the Illinois House require a majority vote of all elected to discharge a committee; twenty-four hours' notice must be given and the motion can be entertained on but three days a week.<sup>60</sup> New York likewise requires a constitutional majority to discharge a committee, but the motion cannot be put until the committee has been ten days in possession of the measure.<sup>61</sup> Under such circumstances it is practically impossible for the house to regain possession of a bill in the hands of an unwilling committee. The situation was so serious in Michigan, where under the two-thirds rule a minority could prevent the discharge of a committee throughout the session, that the present constitution prohibits the legislature from passing any rule which would prevent a majority of the members from taking a bill out of the hands of a committee.<sup>62</sup>

After some painful experience with "pickling committees" the Pennsylvania House has since 1913 permitted sixty members (less than one-third of the body) to discharge a committee which had held a bill ten days. Here the difficulty had been further complicated by a ruling that a motion to discharge a committee must be made under the order of resolutions,<sup>63</sup> which was in order only on Monday night and Friday morning. The House never met on Friday and, as the session on Monday night was limited to one hour, opportunity to move discharge rarely came.<sup>64</sup> But in the reforms of 1913, "Resolutions" was made the fourth order of regular business for each sitting.

It is highly advisable that all committee calendars be cleared up and all business reported back before a stated time in the session, a practice that is perfectly feasible where the time for introduction of measures is limited. Thus one portion of the legislative activity

<sup>60</sup> House Rule 12.

<sup>61</sup> House Rule 10.

<sup>62</sup> *Debates*, Michigan Constitutional Convention, 1907-08, p. 1421.

<sup>63</sup> H. J., 1878, p. 742.

<sup>64</sup> House Rule 62 for 1911 and earlier. If the motion to discharge was unwelcome to the organization the Monday night hour was always consumed before the order of Resolutions was reached.

would be gotten over with, say half way in the session, leaving the remainder of the time for discussion on the floor. The rush and riot of the closing days is happily avoided in Massachusetts and much credit must be given to the custom by which the presiding officers keep account of the manner in which committee work is proceeding, comparing progress this year with the calendar of last year, and if a committee is found to be dilatory, they do not hesitate to apply pressure.<sup>65</sup>

There exists some difference of opinion as to the advisability of requiring committees to report on all matters referred to them. The Massachusetts special committee of 1915 voiced a violent protest against the practice of a committee report on every measure. Committees are compelled, they argue, to consider frivolous measures, and the calendars are crowded with adverse reports which are seldom overthrown but which consume the time of both houses. The recommendation was accordingly made that a committee unanimous against a bill need not report, thus opening the way for prompt consideration of the more important matters.<sup>66</sup> On the other hand, it is urged that committees be compelled to report every measure and that the house take formal action on all. But it is a useless waste of legislative energy to require committees to consider measures to which the committee is unanimously opposed or which a reasonable fraction of the house does not favor. Although mere silence should not stifle legislation and to escape committee tyranny discharge should be made easy, it is in keeping with the dignity and responsibility which a committee should feel to allow it discretion in selecting measures upon which to devote attention.

Where committees are not compelled to report upon each meas-

<sup>65</sup> Joint Rule 10 specifies at what time the final report of all committees must be in, which time may be once extended. Three days after the final limit committees must report with the recommendation that the bill be referred to the next General Court. This recommendation is of course perfunctory, and may be overthrown without opposition from the committee, although it requires a four-fifths vote to do so. This permits a bill to be killed by committee by mere delay unless an overwhelming majority is in its favor. The advantage, however, is found in that it gets all the business of the session before the house in time to dispose of it in an orderly manner.

<sup>66</sup> Committee upon Reform of Procedure, 1915, report pp. 43, 44. In 1914, 1431 matters were reported adversely by unanimous committee vote. These were read by both clerks and went on both calendars. Allowing two minutes for each measure, sixteen legislative days were thus consumed.

ure, there are few adverse reports, unfavored measures usually being allowed to die without formal action; and in view of the common difficulty in discharging a committee this is the surest way to kill a bill. Where no legislation is permitted to die in committee a negative report recommends that "the bill do not pass" or that "the bill be indefinitely postponed," and is commonly adopted by unanimous consent. The question is, "Shall the bill be rejected?" or "Shall the report be adopted?" Vermont found that if the question were put "Shall the bill be read a third time?" as is usual for favorable reports, the indication being towards overturning an adverse judgment of the committee, a committee report was, by the mere inertia of members, often reversed without adequate reason.<sup>67</sup> The Pennsylvania House used to allow a bill negatived in committee to go on the calendar at the request of sixty members (less than one-third), although the earlier practice had been that such bills came up for consideration as those reported favorably. In 1915 the sixty rule was changed to a majority on the ground that because it was easy to get sixty members to place a negatived bill on the calendar, it was crowded with bills which ultimately never passed. Sometimes the lower house has been known to surrender absolute veto power to the committees by making an unfavorable report final.<sup>68</sup> On the other hand, the Senate of South Carolina permits a negatived bill to go on the calendar at the request of one member.

In accordance with the principle to relegate all business which does not require deliberative action to hours when the house is not in session, and to publish disposition of same in the journals, it would be well to abolish the formal reading on the floor of reports of committees. There is no good reason why they should not be filed with the clerk, published in the journal and calendar, and opportunity

<sup>67</sup> The form of the question was changed at the 1917 session.

<sup>68</sup> The custom in Missouri is to pass such a resolution a few weeks before the close, *e.g.*, 1913 H. J., p. 745. A similar resolution was presented in the Indiana House in 1915 in order to seal the fate of the female suffrage and prohibition measures then in committee. At first it was thought to have passed but, in consequence of the storm stirred up by the absolute surrender to a committee, the speaker reversed his decision on the ground that the resolution had not received the constitutional majority required by the rules. (*Indianapolis News*, February 24, 25, 1915; *Chicago Tribune*, February 24, 1915.)

given to move rejection on the floor. If the report is favorable the bill could move automatically to second reading.<sup>69</sup>

#### STEERING COMMITTEES

No discussion of the committee system would be complete without some attention to steering committees, which control the time of the legislature to a greater or less degree in approximately three-fourths of the states. Their function is to guide the house, especially during the last days of the session, through a calendar congested with bills too readily placed thereon. The theory is that, in the tumult of many measures competing for consideration, no important matter must be allowed to go by default.

The confusion attending the closing days of the average legislature is notorious yet natural in so far as it arises from the indolence of the members and the spirit of procrastination which dominates the early days of the session. Indeed, the very existence of a sifting committee, designed as an escape from a crowded calendar, contributes toward the confusion and operates in turn to congest the calendar, since members, who are only human, know that a way out is easy and convenient. Furthermore the hesitancy or lack of courage displayed by the standing committees in killing the less worthy measures contributes to the final congestion and resultant demand for a steering committee. Just as the power of standing committees developed when the number of bills introduced had become too large for consideration by the whole house, so the steering committee emerged when measures approved by the standing committees increased until a further selective agency became an irresistible temptation.

Complaint is common that too few bills are checked at the committee stage.<sup>70</sup> Statistics of legislatures chosen at random demonstrate that in view of the hundreds of bills considered, committees are too lax in exercising their selective function and that many more

<sup>69</sup> In Illinois, Kansas, Massachusetts and Texas reports of committees are not read on the floor, appearing merely in the journals. In Congress bills reported favorably go automatically to the proper calendars; an adverse report is laid on the table unless a request to place the bill on a calendar is made within three days. (Rule XIII.)

<sup>70</sup> Replies to the questionnaire of the Nebraska Legislative Reference Bureau (1913) of but five states could be understood as expressing that committees exercise courage in reporting adversely.

bills reach the debate stage than the house can dispose of conscientiously. Sometimes the sentiment prevails that practically all deserve a fair trial on their merits before the assembled house.<sup>71</sup> This shy attitude assumed by committees towards negative reports constitutes an evasion of an obligation. At the 1915 session the committees of the Ohio Senate killed but 26 per cent of bills introduced in that body, while only 49 per cent of House bills met their fate in the house committees. In Indiana and Kansas less than 50 per cent were stifled in committee and in Michigan less than 40 per cent.<sup>72</sup> The percentage of committee executions to total number of bills considered in New York averages about thirty-five in the Assembly and thirty in the Senate.<sup>73</sup> The lower house in Illinois is an exception, for at the 1915 session committees checked more than 75 per cent of the bills referred to them. The full significance of committee slackness is clear when it is remembered that it means that each house has on its calendars from four hundred to fifteen hundred bills which presumably must be debated and disposed of in addition to those which come from the other branch of the legislature. Under these circumstances, the *raison d'être* of the steering committee is obvious.<sup>74</sup>

Steering committees vary widely in the several commonwealths. In some they are a mere servant occasionally employed as a means by which the house can more readily express its will. In others they are in fact masters of the legislature's destiny, in which case they are often called sifting committees. Steering committees exist in the most innocuous form in those states in which the function rests, as it does in Congress, with the regularly appointed rules committee, which may report a special order to facilitate the progress of a measure. If they are sensitive to the will of the house they merely construct an expeditious plan by which legislative business may be advanced without undue obstruction. They therefore introduce elasticity into the daily program by proposing special

<sup>71</sup> In South Dakota all bills except those of the most trivial character are reported favorably from the committees. (Statement of Dr. Doane Robinson, State Historian.)

<sup>72</sup> Compiled from indices of the several journals of 1915.

<sup>73</sup> Colvin, "The Bicameral System," pp. 77 *et seq.*

<sup>74</sup> Committees deal more gently still with bills from the other house. In Ohio scarcely 20 per cent of Senate bills failed in house committees, and but 7 per cent of House bills in senate committees.

orders altering the regular routine of business, since the house is able with the help of the rules committee to suspend the regular order of business without the delay necessary if a member in his individual capacity should propose the same.<sup>75</sup> In Pennsylvania and Massachusetts reports by the rules committees are unusual, must be confined to a single measure, and must be adopted by a majority vote. The California House retains its control over "rules" by requiring a two-thirds affirmative vote to adopt any modifications brought in by this committee. On the other hand, the Illinois House has gone to the opposite extreme by providing that any special order proposed by the rules committee stands unless overthrown by a majority of all members elected,<sup>76</sup> and the same is true of New York. The rules committee thus becomes a very powerful group.

Several states have gone further than a mere steering committee, which controls discussion occasionally when time is precious, by creating what is known as a sifting committee to determine what measures shall be discussed on the floor. The latter is made the custodian of practically all bills, the house restricting itself to those measures which it submits. Usually towards the close of the session the practice is to adopt a resolution by which the make-up of the daily calendar is delegated to a committee. All bills accordingly owe their advancement to this committee, the house having virtually surrendered its selective power. The Washington House gives complete control of the calendar to a sifting committee which takes charge the first week of the session. In Montana after the fortieth day the steering committee reports the order of consideration of all bills as they come from committee.<sup>77</sup> Even broader are the powers of the calendar committee of the Kansas House, for not

<sup>75</sup> The rules committee of the New York Senate has in the last few years assumed this function when the minority has proved obstinate. The first time that it interfered in the order of business seems to have been at the session of 1897, when a special order limiting debate was brought in. The point of order that the proposed change would require one day's notice was not sustained. From this the power of the committee soon extended to reporting special programs for the progress of a measure.

For an account of the evolution of the Rules Committee in Congress see Alexander, "History and Procedure of House of Representatives," Chapter X, and 4 Hinds 3152, *et seq.*

<sup>76</sup> House Rule 12.

<sup>77</sup> Montana H. J., 1915, p. 353, and statement from State Library.

only does it arrange bills on the calendar but the "fixing of times for the consideration of bills" is entrusted to it.<sup>76</sup> In Missouri and Nebraska the sifting committees name only those bills which take precedence on the calendar,<sup>77</sup> and at the last session the Missouri committee was restricted to naming for advancement five general bills and sixteen private bills daily. Formerly the number had been unlimited.<sup>78</sup> The power of the sifting committee of the Iowa House has been similarly reduced at the last few sessions by exempting from their authority appropriation bills, special orders and bills already on the calendar when the committee takes charge. As pointed out in a recent study of the Iowa Legislature these restrictions make the committee an agency for preventing rather than promoting legislation in that it customarily holds bills until withdrawn by the House.<sup>79</sup> The House does its own selecting through the power to make any measure a special order.

A most extreme example of a sifting committee has been developed in the New York Assembly through the augmented power conferred upon the rules committee throughout the last days of the session. The system is so notorious that a brief review of its development may be of interest.

As early as 1832, a committee of nine was created with unusual selective functions. It could by unanimous vote refer a bill awaiting action by the committee of the whole to a select committee to report complete, i.e., ready for final passage,<sup>80</sup> and in this manner a bill might escape debate until it came up for final vote. This, however, does not constitute an exact precedent for the present rules committee, for as yet standing committees had not been developed to remove unworthy measures from consideration by the house. The purpose was merely to relieve the calendar of the committee of the whole upon which were placed all bills introduced by private members, but nevertheless the arrangement did not escape criticism. In 1857 the select committee on rules deprecated the practice and condemned the transaction of business through "guiding com-

<sup>76</sup> Kansas H. J., 1915, p. 540, Resolution 37. It is common for the committee to limit debate to twenty minutes on one measure.

<sup>77</sup> Missouri H. Res. p. 884, Journal 1915. Statement of Nebraska Legislative Reference Bureau.

<sup>78</sup> Missouri H. J., 1913, pp. 1301-1308.

<sup>79</sup> Shambaugh, "Statute Law Making in Iowa," pp. 545 *et seq.*

<sup>80</sup> Assembly Journal, 1832, p. 363.



mittees" as fruitful of hasty, improvident and fraudulent legislation.<sup>83</sup>

But the pressure on the calendar increased and in 1872 a committee was created with power at any time to report bills of a general nature, which were then placed upon a preferred calendar having precedence over unfinished business.<sup>84</sup> This special privilege was denied at the next session, but in 1886 a new committee became the recipient of the old power.<sup>85</sup> The latter committee was abolished in 1890 to be followed by the all-powerful rules committee of 1892.

In the session of this year the rules were amended to provide that all motions to make a bill a special order, or to suspend the rules for the purpose of reading a bill out of its regular order, be referred to the committee on rules. This committee was empowered to report at any time and its decision was final unless overthrown by two-thirds of the members present.<sup>86</sup> The next year the exercise of this unusual power of determining what measures should be promoted was restricted to the last ten days of the session,<sup>87</sup> and this time limit remains today.<sup>88</sup> The number required to overturn a report of this all-powerful committee was reduced in 1900 from two-thirds to a simple majority vote, but nevertheless its judgment remains wellnigh final since the program which it presents is in practice never overthrown. When it is also remembered that it requires a majority of all the members elected to instruct the rules committee to report, its obstructive authority during the last days of the session, as well as its power to accelerate, is seen to be immense. Furthermore the time in which "Rules" is in the saddle is invariably extended beyond the prescribed ten days by the simple precaution of setting a day for adjournment ahead of the date on which the legislature's business can possibly be completed.<sup>89</sup>

It is the custom in New York further to strengthen the position of this committee by a resolution towards the close under which all matters pending before the various other committees are referred

<sup>83</sup> New York Assembly, Document No. 7, 1857.

<sup>84</sup> New York Assembly Journal, 1872, p. 603.

<sup>85</sup> New York Assembly, Document No. 5, 1887.

<sup>86</sup> Assembly Journal, 1892, p. 484.

<sup>87</sup> Assembly Journal, 1893, p. 2002.

<sup>88</sup> New York Assembly, Rule 24.

<sup>89</sup> In 1911 the rules committee was in charge from May 8th to October 6th. As a rule it governs for a month each session.

to it. Thenceforth "Rules" may be said to be the only committee functioning. As bills in its possession are reported out, they are made special orders on second and third reading.

It would be hard to imagine a method by which a house could more completely subject itself to the control of three members and the speaker, who is ex-officio chairman of "Rules," and still retain the form of a freely deliberating body. From the very beginning the committee seems to have abused its power, the spirit of the standing rules being wholly repudiated. Bills from the bottom of the calendar were moved to the top without attracting the attention which would have followed a motion put to the house. The fate of all measures fell immediately into the hands of these men, and although "Rules" quickly began to monopolize the time of the Assembly, it did not act with the discretion which would have served the end advocated, viz., the advancement of important business which otherwise might never have reached final action.<sup>80</sup> The completeness with which individual members surrendered themselves to the party bosses appears from the two-thirds vote necessary, until 1913, to instruct "Rules" to report. But even under the modified rule of a simple majority the committee is rarely compelled to act, and probably the first instance in which this was accomplished occurred on the closing day of the 1912 session after a majority of members had informally petitioned the committee to release the bill in question.<sup>81</sup>

The rules committee of the New York Assembly does not relieve the congestion of the closing hours of the legislature. If it did there would be some justification for its existence. Its influence extends far beyond a mere selection of measures to be taken up by the Assembly, for by careful managing it can secure the passage of measures during the final rush which would meet with certain defeat in the earlier stages of the session, and refusal to report a measure assures its destruction. Enjoying as much parliamentary power as the English cabinet, the rules committee nevertheless escapes any measure of responsibility before the people. The nullification of its present broad functions by confining them to the preparation of

<sup>80</sup> The rules committee was criticized severely for its work in the first session in which it enjoyed its present power. See *Annual Record*, issued by City Reform Club, New York, 1893.

<sup>81</sup> Report of Citizens Union—New York City, 1912, p. 7.

proper rules for the government of the Assembly would be a signal reform. It would require the legislature to take stock all along the line and might prove the first step towards efficient legislative methods in the earlier days of the session.

The existence of a sifting committee is evidence of the breakdown of the other legislative facilities for eliminating worthless measures and bringing worthy measures to final passage. If standing committees would fulfill their duties and the house were to exercise diligence in clearing up its calendar daily, a steering committee might survive for emergencies, but the excuse for a sifting committee would have vanished. Reliance upon a sifting committee decreases the sense of responsibility of other committees in reporting adversely. To counteract this influence the legislature of South Dakota abolished sifting committees entirely and passed resolutions to clear the calendar each day.<sup>92</sup>

<sup>92</sup> Legislative Reference Bureau of South Dakota, in reply to Nebraska Questionnaire of 1913.

## CHAPTER V

### PASSAGE OF BILLS

Having followed the course of legislation from introduction through consideration by committee, we must now examine the manner and means by which the legislature expresses its collective will upon measures which survive the selective powers exercised by standing committees.

#### QUORUM

It is a general principle of parliamentary law that a deliberative body cannot act without the presence of a quorum. The constitutions of forty-two states in accordance with common practice prescribe that a majority shall constitute a quorum. Indiana, Texas and Tennessee have placed the number at two-thirds. New York requires three-fifths present when passing appropriation bills, and when levying a tax Vermont places the quorum at two-thirds. These provisions, however, are nullified by the general presumption that a quorum is present if no member raises the question, which often permits the transaction of business by a small minority. Appropriation bills have frequently passed the New York Assembly with less than fifteen members present, although the journal showed that the constitutional majority voted in the affirmative.<sup>1</sup> Appropriations have passed the Pennsylvania Senate with but two members present. In fact the practice of acting without a quorum is common to all our legislative bodies. The journals of course do not disclose the absence of a quorum and the courts will not admit evidence to impugn them.<sup>2</sup> It is but fair to note, however, that such practice is possible only by unanimous consent, for

<sup>1</sup> Report of a Committee of the Citizens' Union, 1913. *New York Evening Post*, November 22, 1913, states that appropriations aggregating \$2,000,000 passed the Assembly with six members in place.

<sup>2</sup> See *Auditor-General v. Board*, 89 Mich. 552. A resolution unseating one member and seating another was not invalid because of no quorum present since the journals did not disclose that enough members had been excused to kill the quorum. The presumption of a quorum was not rebutted by affidavits and protests spread on the journal at a later date.

it is always within the province of any member to raise the question of no quorum. The mere threat to raise the point of order of no quorum is sufficient to postpone further consideration of the specific question under discussion. The business of the house, however, is not seriously interrupted for it at once proceeds to other matters. If opposition to any measure has been registered beforehand no action is usually attempted in the absence of a quorum. For example, the Illinois House customarily devotes Mondays, when a full attendance is hard to get, to measures on the calendar to which no objection has been expressed. It must be clear, therefore, that in view of the ease with which a single member can obstruct the transaction of business in the absence of a quorum, proceedings under such conditions are nothing else than action by unanimous consent.

#### PRINTING OF BILLS

Before a measure comes up for consideration by the assembled house it is usually printed and placed on the desks of the members. A few southern states alone remain exceptions.<sup>3</sup> Printing before final passage is mandatory under the constitutions of sixteen states; but three of these, Idaho, New York and Virginia, dispense with it in urgent cases.<sup>4</sup> As a matter of fact, bills are printed on introduction in approximately two-thirds of the states, and in the remaining, with the exception of the southern states noted above, upon the favorable report of a committee.

The advantage gained by printing all bills on introduction is of doubtful value. Maine, Michigan and Minnesota are the more important states whose legislatures, unless by special order to the contrary, print only bills reported favorably from committee. The expense of printing is thus reduced, and above all, the files of members are not crowded with measures which will never come up for consideration. The bill in the hands of the members is corrected to include the amendments added by the committee, thus

<sup>3</sup> In Alabama, Georgia, Mississippi and North Carolina bills are rarely printed. Rule XX of the Pennsylvania General Assembly of 1776 permitted no debate on first reading, and ordered bills to lie on the table for the perusal of members, forbidding any member to take them from the house. In such times the reading of the text of a bill was a real service.

<sup>4</sup> Index-Digest, State Constitutions, pp. 842, 843. Four states forbid consideration before printing. This has been held only to require printing before the bill is debated. (*Massachusetts Insurance Co. v. Trust Co.*, 20 Colo. 1.)

bringing the printed copy more nearly into its final form. Of course bills of exceptional interest may be printed on introduction by special order of the house.<sup>3</sup> The Pennsylvania House has adopted a working compromise by which bills on introduction are printed on pink paper. This copy does not go on the desks of members to congest their files, but may be secured if desired at the office of the sergeant-at-arms. As bills are reported (very few are reported unfavorably, rather are they allowed to die in committee) they are printed on white paper and placed in members' files. In this connection it may be noted that Connecticut has taken a step towards differentiation between special and general laws by requiring that the former be printed at the expense of the petitioner who must in addition pay a fixed fee.<sup>4</sup> The New Jersey Assembly and the two Houses of Rhode Island also provide by their rules that the cost of printing special bills must be borne by the applicant.<sup>5</sup>

#### READINGS

Parliamentary common law prescribes that each bill shall receive three readings before it shall be brought up for final passage. These stages in the progress of a measure antedate the use of the printing press, when copies were written out in long hand and read for the information of the members. But the necessity for reading at length no longer exists and readings are today of no significance other than to mark successive steps in the advancement of a measure, each one being a device to secure adequate delay. Provisions regarding the reading of bills occur in thirty-six state constitutions, thirty-four requiring three readings, twenty-five specifying that they be on three different days, and three that not more than two readings shall be on the same day. Thirteen states permit the requirement of readings on separate days to be relaxed somewhat by a vote larger than a simple majority, although in five the vote upon the question of urgency must be by ayes and noes, and in two it must be entered on the journals.<sup>6</sup> The mandate which compels

<sup>3</sup> In Maine one-third more are introduced than are printed; in Michigan and Minnesota about 50 per cent of those introduced are printed.

<sup>4</sup> General Laws of Conn. (1902), §§ 32, 10.

<sup>5</sup> New Jersey Assembly Rule 49; Rhode Island Senate Rule 34, Assembly Rule 38.

<sup>6</sup> Index-Digest, State Constitutions, pp. S40-S42. In Georgia bills must be read on three separate days unless in case of actual invasion or insurrection.

three readings on different days is salutary as contributing to discourage hasty passage, and, when absolute, tends to lighten the pressure during the last three days by preventing the introduction of measures at this time. Where the requirement is not absolute it may be of little effect through the habit of granting unanimous consent to its suspension.

Ordinarily first reading is merged with the announcement of introduction, but if the constitution prescribes absolutely that there must be three readings at length, first reading usually does not come until after favorable report by a committee. Thus in Pennsylvania and Illinois the reading by title on introduction does not count as a constitutional reading, and an additional step equivalent to an additional reading is made necessary. West Virginia escapes this extra stage through a provision which allows the suspension of the constitutional prescription of three readings in full by an aye and no vote entered upon the journal. Rather than read the bill in full on first reading the house regularly records an aye and no vote on a motion to suspend. This is a useless formality and would consume an inordinate amount of time were the roll actually called.

As pointed out in the chapter above, the custom of giving two readings before reference, still obtaining in some legislatures, is a mere survival and is indefensible now that no debate is held until after report back by a committee. Today it is generally considered bad form to begin an attack upon a bill before the debate stage following committee report. If two readings are had before reference, debate occurs normally at the report stage when the question is either on accepting the report of the committee, or, this being perfunctory, upon ordering the bill to a third reading. Thus is added virtually a fourth reading without increasing in the least the opportunity for deliberation. Massachusetts and Maine also add a fourth stage but one that serves a somewhat different purpose. At third reading the question is put on passing the bill to engrossment after which it is sent to the other house for concurrence. There having "passed to be engrossed" it is returned to the house of its origin where it is "passed to be enacted" and sent again to the other house likewise to be "passed to be enacted" or rejected. Final passage is thereby separated distinctly from the preceding stages, a procedure forbidden by the Constitution of New York,



which compels the final vote to be taken immediately following third reading. The virtue of the Massachusetts plan is that no temptation exists to slip in amendments at the last moment since both houses have approved the measure in its final form at the "passed to be engrossed" stage.<sup>9</sup> Obviously the Massachusetts practice eliminates the evil which caused New York to merge third reading and final passage, viz., the postponement of final passage, after reading a bill a third time, to a preconcerted hour when it could be forced through by log rolling. The sense of the house is expressed when the bill is ordered to engrossment, and final passage is merely an opportunity for the expression of a more mature judgment after the other house has acted.<sup>10</sup> In other states the vote on passage usually follows immediately upon third reading although they are separate orders of business and although occasionally final action may be postponed, perhaps to secure the attendance of more friends of the measure.

The constitutions of five states provide for reading of measures at length after passage and before signing by the presiding officer.<sup>11</sup> The purpose is to guard against alteration at the last moment of the official copy of the act, either through fraud or error. Although experience has shown that constant vigilance alone assures a correctly enrolled act, the utter futility of any provision regarding reading in full is self-evident, since only a pretense is made at fulfilling the constitutional mandate. Even before the reading clerk is well started, impatient members interrupt by cries of "Aye, aye."

The framers of our state constitutions seem generally to have considered the reading of bills at length to the assembled house as an effective aid to good legislation. Today twenty-six constitu-

<sup>9</sup> Amendments are forbidden after engrossment, and the copy upon which the final vote is taken becomes the official copy of the act. Senate Rule 49, House Rule 53. An examination of the journals will show that a bill approved by both houses at the "passed to be engrossed" stage suffers little danger at the "passed to be enacted" stage.

<sup>10</sup> It is true that no calendar is kept in Massachusetts of bills on final passage but the speaker will give notice to any member of the time at which a certain one is to come up. Frothingham, "A Brief History of the Constitution and Government of Massachusetts," p. 117.

<sup>11</sup> Kentucky, New Mexico, Alabama, Oklahoma and Louisiana. In Alabama and Oklahoma two-thirds may dispense with it, and it is not required in Louisiana unless five request it. Index-Digest, State Constitutions, p. 842.

tions specifically require that bills be read in full at least once before final passage, although two, Ohio and Virginia, permit the mandate to be suspended in cases of urgency. Fifteen of the above require three readings at length. Of the latter, eleven constitutions permit one or two full readings to be dispensed with, but in four the provision is inflexible. Such prescriptions betray in the minds of their authors a wholly unscientific knowledge of human psychology. It is difficult to believe that even a most sympathetic imagination could have visualized a legislature sitting through a single afternoon, earnestly attentive while bill after bill was read in their hearing. The time which would thus be consumed alone renders compliance with the constitution impossible. Many bills are long and technical and their reading aloud could serve no useful purpose. A recent chartering bill in West Virginia covered 247 pages, and an honest reading would have been a sheer waste of precious time. Usually the clerk reads the title and perhaps a few words of the text, consuming but a fraction of a moment although the journal will show a reading in full.<sup>12</sup>

The house, however, will usually recognize a demand that the bill be read in full as the constitution requires, a concession which lends itself easily to obstructive tactics, since it is easy for a minority wishing to delay action to demand their constitutional right. Although no constitutional mandate to read bills in full exists in New York, the Senate of that state was accustomed to grant such demand until the session of 1915 developed an extraordinarily obstinate minority. As a consequence the point of order was sustained that the right to call for reading at length could be exercised only in the committee of the whole upon the second reading of the bill.<sup>13</sup> The way henceforth is opened to defeat such dilatory methods at the beginning, although the minority loudly protested that their constitutional guarantee was being violated.<sup>14</sup>

<sup>12</sup> See article "Improvement of Legislative Methods and Procedure" by Chester Lloyd Jones in *Proceedings of the American Political Science Association*, 1913-1914, p. 191, for the experience of several states with the constitutional provision under consideration. More complete returns collected by the Nebraska Legislative Reference Bureau bear out the conclusion that the requirement is not only futile but harmful.

<sup>13</sup> Senate Journal, 1915, p. 936; and New York Times April 2, 1915.

<sup>14</sup> Mr. S. B. Scott in his forthcoming book on Pennsylvania state government gives a highly entertaining instance in which the power to demand reading in

## DEBATE

It is common knowledge that our state legislatures are no longer deliberative bodies and that there is little real debate on the floor. Debate, such as it is, generally occurs when the bill comes up the first time after favorable report by committee. This is on second reading, unless it is the custom to give two readings before reference, in which case opportunity for debate upon the merits of the measure arises on the question of adopting the report or ordering the bill to third reading. The practice of some legislatures provides for no real debate until third reading, and consequently all discussion must immediately precede final action.<sup>12</sup> The custom of a majority of the legislatures, however, is to pursue a less summary course by separating debate and final action. The debate stage being the normal time for introducing amendments, members have an opportunity to express a more mature judgment when the revised measure comes up later for final passage. Second reading therefore is usually the crucial period in a bill's history and unless it is of special political significance, third reading, which gives an excellent opportunity to debate the merits of the amended measure, is as much a matter of routine as the first. In keeping with Massachusetts' unique procedure, only a few bills are discussed at second reading, debate being held at third reading upon the question of engrossment. As noted above, final passage is postponed until the other house has concurred in the order to engross.

Most legislatures permit bills to be taken up by sections at the debate stage. As each section is considered amendments may be proposed, and it is well that here the house should move deliberately. If reading by sections is postponed until third reading,

full was invoked as a dilatory measure. Third reading of a bill covering fifty-two closely printed pages of three columns each in the record was demanded. The clerks became exhausted and members were summoned to take their places while kindly persons insisted that the reading be louder and more distinct, in order that they might follow it on their files. Finally a reading squad was organized to read several portions of the bill simultaneously and the majority felt that they had fulfilled the letter of the law. In all about four hours were consumed.

<sup>12</sup>Alabama, Connecticut, Illinois, Iowa, Louisiana, Kansas, Ohio and the Dakotas report that debate is commonly delayed until third reading. In Kansas, however, many measures are discussed in committee of the whole, which is the second reading stage. Measures which escape the committee of the whole are not debated until third reading.

errors which would otherwise have been disclosed at an earlier time are not discerned until it is difficult to rectify them. Yet strangely enough, the ten states, which by constitutional mandate prescribe but one reading in full, specify that it shall be the last.<sup>16</sup>

#### THE COMMITTEE OF THE WHOLE

At one time the committee of the whole, which furnished such excellent facilities for discussion, was a part of the normal procedure, but the general spirit of speeding up today pervading legislative halls has worked for its downfall. It is not recognized by the rules of the New York Assembly, while in the West Virginia Senate there have been but two committees of the whole in the last twenty years, and in Massachusetts but one in the last twenty-five years.<sup>17</sup> The rule of the Pennsylvania House requiring the committee of the whole on all measures is invariably suspended by unanimous consent. With monotonous regularity the journal records, "the rule requiring bills to be considered in the committee of the whole being in this case dispensed with." Elsewhere, however, the rules generally provide merely that the committee of the whole may be ordered upon a majority vote, a privilege, it may be repeated, availed of but little. Where its use still survives the procedure is for all bills favorably reported by committees to go on the calendar of general orders and for the house to go into the committee of the whole automatically when this order is reached in the daily program. Kansas, Michigan, Montana, Nebraska and Oklahoma may be mentioned as making general use of this form of organization.

The advantages of the committee of the whole are such as to have started a movement for a general return to its employment. In it the restrictions of formal debate are thrown aside, and although the personnel of the members does not differ from that of the house, they come to it in a different frame of mind. Its purpose is frank discussion and deliberation. The committee of the whole may hold a public hearing; as for example, at the hearings in 1915 by the Illinois Senate upon the bill to abolish capital punishment

<sup>16</sup> Index-Digest, State Constitutions, p. 842.

<sup>17</sup> Statements in reply to the Nebraska Questionnaire. A motion to go into committee of the whole in order to hear testimony concerning a proposed railroad measure was defeated by an overwhelming vote. Massachusetts House Journal 1915, p. 1212.

the Governor and others appeared, addressed the Senate, and were in turn questioned by members.<sup>18</sup> In this connection it may be noted that Wisconsin, whose rules permit the committee of the whole upon a demand of one-sixth, is taking greater and greater advantage of this more or less informal organization by summoning administrative officials before it. Such procedure is also valuable in the consideration of money bills, which should be taken up item by item. The Illinois House in 1915 adopted a practice frequently followed in Kansas and Oklahoma, by which bills at introduction may be referred by the speaker directly to the committee of the whole; the idea being that upon some bills it would be well if members were uninfluenced by the action of a committee. The rule in Illinois has been of no effect because the privilege of reserving bills for consideration by the whole house has been rarely exercised.

The possibility of abuse of the committee of the whole, which has done much to bring it into disfavor, lies in the absence of any record of proceedings therein and in the disposition of the house to sanction, without a roll call, the adoption of amendments reported therefrom. The general parliamentary principle that the ayes and noes cannot be demanded in this committee is reinforced by specific rule in many states. In a few cases, however, some record is preserved. In Maine, Illinois and Pennsylvania a report of debates appears in the stenographic record of all proceedings, although there is no way of getting the members' votes on record, and in none of these is a committee of the whole more than a very occasional occurrence. A small fraction of the committee of the whole may demand a roll call in Kansas, Kentucky and Nebraska but common practice neglects the call for the ayes and noes.<sup>19</sup> Louisiana seems to have been the first to require a complete record of action of this committee to be entered on the journal as are other proceedings of the house,<sup>20</sup> and the Arizona Senate alone has followed her example.<sup>21</sup> Where the constitution requires three read-

<sup>18</sup> Illinois Senate Debates, 1915, pp. 442 *et seq.*

<sup>19</sup> In Kansas and Kentucky twenty-five may demand a roll call, and in Nebraska ten.

<sup>20</sup> House Rule 67. An examination of the journals of Louisiana reveals that this is usually observed.

<sup>21</sup> Statement of the late Senator Cunniff of Arizona.

ings of bills, consideration in committee of the whole is counted as the second reading, although this was not true formerly.<sup>22</sup>

#### CONTROL OVER DEBATE—OBSTRUCTION

Control over debate is always possible for the lower house through the simple expedient of the previous question. The usual practice of the upper houses likewise permits debate to be closed by this means, although certain restrictions may be enforced, such as the condition that more than one member must second the motion.<sup>23</sup> In Connecticut, Massachusetts, New York and Vermont the previous question in the Senate is not in order. This does not mean, however, that cloture may not prevail. On the contrary, in the Massachusetts Senate debate may be closed under the rules one hour after the adoption of a motion to that effect, and on this motion not more than ten minutes can be consumed in debate.<sup>24</sup> In the New York Senate the president must recognize a member who wishes to move to close debate after the measure has been before the house for six hours.<sup>25</sup> This rule was adopted after experience had persuaded the members to surrender their senatorial privilege of unlimited debate, but immediately was rendered ineffective through a ruling by an unsympathetic president that the time for debate might be extended by offering a substitute measure, which constituted a new and independent proposition.<sup>26</sup> To escape this impasse the rules committee began to report special limitations upon debate, and cloture in the Senate became an accepted fact.<sup>27</sup> In 1915, following a series of obstructive tactics by the minority, a resolution was passed to extend throughout the session which, although not authorizing the previous question, accomplishes the same result. A motion to close debate could be moved at any

<sup>22</sup> Sustained in *In re Reading of Bill*, 1 Colo. 641.

<sup>23</sup> In the senates of Virginia and Wyoming three are necessary to demand the previous question. In Pennsylvania, four, and in Delaware, five.

<sup>24</sup> Senate Rule 47. Adopted in 1882.

<sup>25</sup> Adopted in 1894. S. J. pp. 125, 196.

<sup>26</sup> S. J. 1894, pp. 191, 196 *et seq.* The chair was able to defeat the will of the majority by refusing to consider an appeal from the decision on the ground that no question of order was involved.

<sup>27</sup> S. J. 1897, p. 1326. This is believed to be the first instance. Debate was limited to two hours.



time, and when carried, shut off debate immediately; members were allowed but two minutes on roll call to explain their votes.<sup>28</sup>

The Georgia Senate while permitting the previous question has placed unusual restrictions in its way by requiring a majority to sustain the call for putting the motion, a motion to adjourn or to lay on the table being in order before the question on closing debate is taken, and by further prescribing that no senator before yielding the floor shall submit any motion the effect of which shall be to prevent further debate.<sup>29</sup> Thus the custom, widely practiced in the Illinois Senate, of making a motion and in the same breath moving the previous question upon it is impossible. In the Illinois Senate it is not unusual for one to move that a bill be taken up on third reading and final passage out of its order and immediately to move the previous question. This objectionable procedure prevents any debate whatever upon the measure since the earlier stages were passed perfunctorily, all discussion having been postponed until third reading. It will be seen from the foregoing that the dignity of the upper houses of our legislatures no longer demands freedom of unlimited discussion and that the means of checking long-winded tactics are universally at hand.<sup>30</sup>

<sup>28</sup> S. J. 1915, pp. 933, 934. Not even questions of personal privilege were in order after the motion to close was carried. P. 1160.

<sup>29</sup> Senate Rules 59, 122.

<sup>30</sup> The development of the previous question as a means of suppressing debate and bringing the house to an immediate vote upon the matter at hand was thoroughly reviewed in a discussion in the Fourteenth Congress (January 19, 1816) upon a motion to expunge the rule which permitted it to be invoked. William Gaston pointed out that it was originally used in Parliament to postpone the putting of the question when a decision at the time would be embarrassing or injurious, owing to the delicate nature of the subject. If the previous question was carried, discussion of the main question was suspended and debate turned to the propriety of taking a vote on the main proposition. "Its purpose was not to suppress unpleasant discussion but unpleasant decision." The question then put was, "Shall the main question be now put?" (5 Hinds 5443, and for Parliament May, p. 269.) Today it is stated negatively in Parliament, viz., "That the question be not now put," because of the similarity of the old form to the cloture motion now in use. (May, p. 269.) Unlike the experience of American legislatures, development of cloture in Parliament did not proceed from an abortive use of the previous question, where such motion still retains its early purpose.

The previous question was first invoked to shut off debate in Congress on December 15, 1807, on which occasion, however, the speaker's decision, that the question decided in the affirmative precluded further discussion, was overruled



Obstruction in the state legislatures is further made difficult by the general adoption of time limits upon speeches, which are either incorporated in the rules, as in the Illinois Senate and House and the New York Assembly, or are more commonly enforced by a resolution passed about the middle of the session. In this manner Massachusetts has placed the limit at ten minutes, Kansas at fifteen, and the New York Senate at five.<sup>31</sup> Obstruction has but rarely presented a troublesome problem in the state legislatures since both majority and minority are anxious rather to speed up legislation than to impede it. Vigorous use of the previous question plus the operation at times of a steering committee with power to restrict incidental motions has been generally effective against efforts of the minority to impose its will upon the majority. Following congressional practice, speakers refuse to consider dilatory motions, even going so far as to deprive a member of the floor if he is not using his time in good faith.<sup>32</sup>

by a vote of 103 to 14, which judgment was affirmed later on December 1, 1809, by a vote of 101 to 18. But on February 27, 1811, the House reversed itself during the debate on the Non-Intercourse act by ruling that the previous question did shut off debate. This action was taken during the last days of the session when time was precious. It is clear that the previous question was not called in through misunderstanding as to its accepted use, the speaker's decision in accordance with the precedents established on the two earlier occasions being overruled, but because it seemed to furnish a convenient instrument of cloture when one was sadly needed. In England, however, the question of cloture was fought out on its own basis, a distinct procedure being constructed for the purpose. (See Redlich, vol. I, pp. 137 *et seq.* and vol. II, pp. 227 *et seq.* For a complete history of the previous question in Congress see 5 Hinds, ch. CXX.)

Cloture was not admitted in Congress without a severe struggle, and although no precedent could be found in Parliament, one at least existed in the rule of Pennsylvania Colonial Assembly (Rule XVII in 1776), "If at any time a debate prove tedious and four members demand that the matter be put to vote, speaker shall not refuse it." McConachie, "Congressional Committees," pp. 23, 24, states that this rule first occurs in 1703 and that a rule authorizing the speaker to stop superfluous and tedious debates appeared as early as 1682.

<sup>31</sup> In Illinois Senate and New York Assembly under the rules a member may speak fifteen minutes; in the Illinois House thirty minutes, and in the Washington House only ten minutes. For resolutions limiting debate see Massachusetts House Journal, 1916, p. 198; Kansas House Journal, 1915, p. 28; New York Senate Journal, 1915, p. 1589.

<sup>32</sup> Michigan House Journal, 1901, p. 1234. The old procedure of demanding roll calls on amendments to the journal, sometimes employed before Speaker Reed's ruling on dilatory motions, would be quickly suppressed today.

A unique method of obstruction was employed at the 1913 session of the Illinois Senate, when a strong minority was seeking to prevent the naming of a rules committee until the results of certain contested elections could be known. The scheme, which failed as a matter of course, was to offer amendments to the resolution naming the committee. Notice would then be given that the next day reconsideration would be moved of the vote by which the amendment was lost, which, the minority believed, delayed action upon the main proposition until the amendment was disposed of. The opposing view of the majority was that all ancillary motions are carried by the main motion and that a substitute cannot be used as a method of defeating the main question. Accordingly, the majority finally went ahead and passed the resolution, later overruling the objection of the chair that the original motion was never passed while amendments were pending. The presiding officer was of the minority party and, as every minute was valuable in the race to control the make-up of the rules committee, the majority at the time had no hesitancy in overruling his decision. It was, however, a doubtful parliamentary proceeding as the effect of a motion to reconsider is to suspend the original proposition.<sup>23</sup> Alabama alone has guarded by rule against such a situation by providing that a motion to reconsider a subsidiary question cannot remove the main question from consideration but shall be disposed of at the time made.<sup>24</sup> It may be pointed out that such a situation could not arise in those states which like Pennsylvania do not admit a notice of reconsideration. It is unreasonable, however, that the will of the majority should be defeated by such paltry means and the speaker would have been justified in ruling such conduct as dilatory. It is sufficient that an opportunity be given later to reconsider the final vote at which time amendments would be open for reconsideration also.

#### SUSPENSION OF THE RULES

But as has been already indicated the dangers in legislative procedure lie rather in the direction of too little discussion than in the direction of too prolonged debate. No rule is invoked so often as the one which permits dispensing with the rules so that bills may

<sup>23</sup> 5 Hinds 5704.

<sup>24</sup> House Rule 18.

be hurried through in several minutes. Only indeed where the constitutional requirement of readings on several days is absolute can undue haste be avoided; a two-thirds or three-fourths vote to suspend the provision being as easy to secure as a simple majority. Rarely is a division necessary to secure the requisite number, which is usually obtained by unanimous consent.<sup>35</sup> Naturally the most frequent suspensions of the rules to expedite legislation involve local and obscure measures, for if any political importance attaches to the bill the minority will see that it takes the normal course. A member announces: "Gentlemen, this is merely a local measure, personal to me and my constituents and I ask to have it put on immediate passage." The house is not interested and is quite willing to act blindly upon the recommendation of the local member.

The usual method of facilitating passage is simply to omit certain of the steps which a bill would normally take. It is not uncommon to advance bills, as they are reported from committee, to third reading subject to amendment and debate. In this manner they escape the customary debate stage, which occurs either at second reading or on the motion to accept the committee's report, and pass finally without discussion. Another method of facilitating passage is to adopt a motion to consider the second reading as the third and pass the bill at once,<sup>36</sup> or to order that a measure, reported from committee, be engrossed at the clerk's desk and put on final passage.<sup>37</sup>

Unfortunately for the public, the confusion of the closing hours is greatly intensified by indiscriminate suspension of the rules. Indeed where constitutional checks do not prevent, bills may be advanced from introduction to final passage in a few seconds. Obviously such proceedings nullify all checks and safeguards.<sup>38</sup> In Delaware the Senate will admit a bill on introduction, go into committee of the whole, receive and adopt the report therefrom, read it a third time, and pass it as rapidly as the successive motions can

<sup>35</sup> For the constitutional provisions which permit suspension of readings on several days *see*, Index-Digest of State Constitutions, pp. 840-842.

<sup>36</sup> The practice in Washington.

<sup>37</sup> Ohio practice. Minnesota also frequently moves a bill from committee report to final passage in one motion.

<sup>38</sup> Kansas, North Dakota and West Virginia are the worst offenders. In West Virginia the ayes and noes on the motions to suspend the rules appear on the journals.

be put. Naturally separation of the several stages by several days does not guarantee deliberation or thought, but it does afford an opportunity for them and a chance for anyone who may be interested to be heard, as well as for verification of the official, enrolled copy.

Investigation of the journals reveals that in most legislatures the majority of business of the closing days is done under suspension of the rules. Only bills so favored can secure attention. In the absence of a steering committee suspension of the rules to consider a bill out of its regular order is the house's way of sifting legislation. Bills move from second to third reading and final passage without regard to the regular order and the calendar is thereby rendered futile.<sup>39</sup> Michigan and New York have sought to meet the evils of undue haste by the constitutional prescription that all bills be printed and in the possession of members, in Michigan five days before final action,<sup>40</sup> and in New York three days in final form, thus rendering snap amendments impossible.<sup>41</sup> The rules of the New York Assembly further guard against surprise by the provision that a bill shall be on third reading calendar two days before being taken up unless it has been made a special order, in which case third reading is permitted to follow immediately upon second. Notice of the special order, however, must appear on the calendar two days before consideration.<sup>42</sup> Suspension of this procedure is guarded against by the general requirement of one day's notice to suspend any rule.<sup>43</sup> Yet it is quite common for a member to secure unanimous consent to put a bill on final passage immediately after the report of a committee. It must be admitted, however, that the situation the last few days is relieved by the fact that the daily program is completely in the hands of the rules committee.

Between a sifting committee easily amenable to the will of the house and the transaction of business under a general suspension of the regular order there is a real choice. The advantage of a prearranged calendar which gives certainty as to what business

<sup>39</sup> Minnesota begins this early in the session.

<sup>40</sup> Art. 5, Sec. 22.

<sup>41</sup> Art. 3, Sec. 15. Of course if the requirement of three readings on separate days is made absolute by the constitution, bills cannot be advanced in whirlwind fashion from introduction.

<sup>42</sup> Assembly Rule 12.

<sup>43</sup> Assembly Rule 55.

shall come up is wholly with the former. The Senate of New York, which uses a steering committee but little, preserves a semblance of regular order at the end by a rule that all bills must be referred to the committee of the whole before third reading.<sup>44</sup> As the session draws to a close, "General Orders," the calendar of bills before the committee of the whole, is never reached in the day's business. Consequently a measure must depend for advancement upon securing unanimous consent to dispense with the committee of the whole and to order it directly to third reading. The task of objecting to such advancement for any measure is delegated to the majority leader by his party colleagues. The minority group for practical reasons find it to their advantage usually to remain in line and consequently a single man, the majority leader, determines the fate of the bulk of the measures which come up during the last days of the legislature. The grip of the organization is further strengthened by the ruling that motions to discharge the committee of the whole must be made under the order of "Motions and Resolutions," an order seldom reached on the last days. It is therefore impossible for legislation unfavored by the organization to get a hearing. The minority must behave, since it has legislation on which it will ask unanimous consent, and it cannot risk discipline by the majority.

A commendable reform would be to allow motions to discharge the committee of the whole under "Reports of Standing Committees," which is reached early in the day's session. "General Orders" would then no longer serve as a graveyard for bills but rather as a depository for them until withdrawn by the senate using its selective power through its ability to discharge the committee of the whole from those matters which it wished to consider at the late date. A great many measures reported from standing committees on the last few days escape consignment to "General Orders" by gaining unanimous consent to immediate advancement to third reading, there to await their turn on the calendar. If the sponsors are unwilling to have their measure lie on this calendar until it can be taken up in its regular order, they move to suspend the obstructive rules in order that it may be rushed through to final passage. Upon this motion, however, one day's notice is required, and when the motion comes up at a later day members have an opportunity to defeat the rapid progress of the measure.

<sup>44</sup> Senate Rule 18.

The point to be noticed is that by the practice of the New York Senate, few bills are rushed from committee through final passage without due notice to members, and to this extent it is an improvement over the haphazard methods practiced elsewhere. Occasional measures are rushed through by unanimous consent under a general suspension of all rules, but such cases are the exception rather than the rule. Although very autocratic, a more orderly system of selection prevails than in those legislatures which have developed no other sifting agency than business by unanimous consent.

#### AMENDMENTS

Notwithstanding how accurately and skilfully a bill may be drafted, ambiguities and inconsistencies may creep in due to the insertion of improper amendments. Accordingly, examination of all amended measures by an expert before they are put up for final vote is much to be desired, yet only a few states provide by rules for such revising process. Colorado, Maine and Massachusetts have committees which revise bills before third reading and are authorized to correct inaccuracies, repetitions and inconsistencies. The actual work of course is done by clerks and everything depends upon the skill and experience of the clerical force. Wisconsin employs a revision clerk in the Senate and a revision committee in the House to examine amendments while the bill is yet in the hands of the standing committee, and an additional committee on bills on third reading is maintained in both houses. The New Jersey House leaves it to the speaker to decide whether amendments shall be submitted to a committee on bill revision to see that they agree with the context. No bill can be reported from a committee in Connecticut until after it has received the approval as to form of the clerk of bills, who is always an official of several years' experience in legislative matters, having reached the position through systematic promotion. The committees on revision in New York and Massachusetts, authorized to examine the grammatical language, correct typographical errors and make the bill accomplish the purpose intended, employ experts for the work. The work of the New York committee is somewhat weakened through their inability to report amendments; they report only recommendations which do not force consideration as amendments would. With the exception of Massachusetts none of the above committees can



effect changes in the legal sense. The revision committee in Wisconsin, however, may call attention to any change deemed advisable as long as the proposed alterations do not affect the scope of the bill. The committee in Massachusetts may report as amendments changes in the legal effect. It will be seen that at best the legislatures have taken only half-way measures to assure that bills, perhaps admirably drawn for introduction, shall not be rendered ambiguous, inconsistent and impossible through amendments which may be adopted.

Yet regardless of how thoroughly measures are examined and corrected before third reading, if the way is clear to introduce amendments on final passage gross evils may result. It works out about as follows: "The clerk announces the reading of a bill; he begins its reading, when a member offers an amendment which no one understands but himself and the amendment is adopted. The reading goes on and the bill is passed as amended. In the hurry and probable confusion of the moment, no one but the mover of the amendment may know exactly what it is or how it affects the nature and subject matter of the bill."<sup>45</sup> It can be appreciated that members are loath to hold up amendments presented on third reading simply because they do not understand them. The course of least resistance is to remain quiet and acquiesce. Accordingly a prohibition upon all amendments on third reading was inserted in the New York constitution of 1894,<sup>46</sup> which unfortunately has been construed to admit amendments until the final section of the bill has been read. Yet if amendments are adopted at this stage final passage is delayed by the constitutional mandate that all bills must lie printed in final form for three days on the desks of members.

More than thirty legislatures forbid by the rules amendments on third reading. To amend a bill which has reached this stage it is necessary to recall it to second reading, adopt the amendments and advance it again to third reading. The spirit of the provision is violated by the practice of numerous legislatures which permits a motion that the bill be called back to second reading and recommitment with instructions to report certain amendments forthwith.

<sup>45</sup> From the speech of a member before the Constitutional Convention of New York, 1894. Record, vol. I, p. 479.

<sup>46</sup> Art. III, Sec. 15.



Without leaving his place the chairman of the committee designated immediately reports the bill as amended and it is restored to its place on third reading. Other states either permit under the rules amendments freely on third reading or systematically violate the rules as do Kansas and the Indiana Senate.

The value of ordering a bill back from third to second reading in order to amend is therefore dependent upon the time which elapses before the amended measure comes up for final passage. If Ohio practice is followed, amendments on third reading (the usual time for amendments in Ohio) are referred to a select committee of one, the person proposing the amendment being named, who announces immediately that he has amended the bill as directed by the House, which acts on it forthwith. The measure then goes at once to final passage. Nothing is gained by this useless formula, since all the evils of hasty amendment and passage survive. But if the bill called back to second reading to amend comes up on third reading in the order that any bill does, if it is called back in fact so that it goes to the foot of the third reading calendar, members have time to come to an intelligent conclusion.

A more effective means of attaining the desired end occurs in the constitutional requirement that all amendments be printed before being acted upon.<sup>47</sup> The experience of those states whose constitutions contain such provisions has been that, the temptation to passage the moment after amendment being removed, the rule which sends the bill back to third reading and compels it to come up in regular order on third reading has been observed in spirit instead of being suspended by unanimous consent. Of course cases have occurred in which the amendment was hastened to the printer and received back in half an hour to be passed hastily, but as this involves considerable difficulty they are comparatively rare. Whether the mandate that all amendments shall be printed extends to those which merely strike out matter and propose nothing new

<sup>47</sup> California IV, 15; Colorado V, 22; Idaho III, 15; Illinois IV, 13; Missouri IV, 29, 30; Nebraska III, 11; Pennsylvania III, 4. Unfortunately this has been held in Colorado not to apply to amendments recommended by conference committees. (*Board v. Strait*, 36 Colo. 137.) It may be repeated that New York very wisely requires the printing of a bill in final form three days before passage. Missouri requires that all amendments be incorporated in the engrossed bill and the engrossed bill be printed.

has given rise to some doubt, but better opinion seems that printing anew is necessitated. Pennsylvania came to this view in 1913,<sup>48</sup> although earlier custom had been to put the bill on final passage at once.

Amendments whether printed or not should be attached by responsible clerks to the copies of the bills on the files of members. A busy legislator should be able to refer easily to the whole measure, but has no time to clip amendments from the journal and paste them on a copy of the bill. Vermont makes this possible in a less satisfactory manner by printing on the calendar the citation to the page of the journal on which the amendment may be found, while Massachusetts inserts it therein in full.

Amendments are usually disposed of without roll call unless the ayes and noes are demanded. Alabama is an exception to the general rule in that her constitution requires the names of all those voting to be entered in the journal.<sup>49</sup>

It is possible that a bill, passed by one house, might be completely modified by amendments introduced in the other. These amendments might then be adopted by the first house without a roll call. The measure in its final form would thus escape a recorded vote in the house of its origin, although the constitution might require an aye and no vote on the passage of all measures. In order to render this practice impossible, the constitutions of seven states require that votes of one house on concurring in an amendment of the other be entered on the journal.<sup>50</sup> Today, however, the constitutional prescription that final passage shall be by ayes and noes entered in the journal has been generally interpreted to imply that, although a bill has once passed the house on a recorded vote, concurrence in amendments adopted afterwards by the other requires a similar vote.<sup>51</sup> Thus it becomes impossible for either house to escape going on record on the measure in its final form. Indiana is an exception in that measures returned with amendments to be concurred in do not come up a second time for final passage but are accepted by a *viva voce* vote.

<sup>48</sup> Legislative Journal, 1913, p. 3632.

<sup>49</sup> Alabama IV, 64. Of course it does not follow that there is always a real roll call.

<sup>50</sup> Colorado V, 23; Louisiana 40; Mississippi IV, 62; Missouri IV, 32; Pennsylvania III, 5; Virginia IV, 5; West Virginia VI, 31.

<sup>51</sup> The constitutions of three-fourths of the states contain this provision.

The prevailing practice in considering amendments made by one house to measures which have already passed the other lends itself to grave abuse through the power of the presiding officer to call them up at will as messages from the other house. He is thus enabled to select the most favorable time to rush concurring action. Such control over the fate of amendments would be destroyed if a special order of business were devoted to consideration of messages from the other house, and if amendments in which concurrence is desired were placed on the calendar. Precautions of this nature are taken in Vermont. Not only are members informed of amendments from the other house by their appearance in full on the calendar, but a definite time is set aside for their consideration under the order of business of Senate (or House) proposals of amendment. A rule of the New York Assembly is likewise designed to assure deliberation on such proposals. Amendments made in the Senate to measures passed by the House are to be referred to the committee which originally reported the measure,<sup>22</sup> but unfortunately this is never observed.

There remains one possible reform concerning the treatment of amendments which can be stated very briefly. Under general parliamentary law amendments once adopted by the house on second reading cannot be struck out on third reading unless a motion to reconsider has been carried. Motions to reconsider involve retracing the steps by which the bill passed second reading and are subject to the restriction that they must be made within a certain time, usually twenty-four hours after the vote proposed to be reconsidered has been taken. Great inconvenience is apt to arise from the difficulty of modifying an amendment once adopted, should a minority prove obstructive. On the other hand, amendments proposed by a committee, although adopted by the house when it agrees to the report of the committee, are not treated as an integral part of the bill and can be altered or stricken out at will. The suggestion here is simply to provide a similar method of striking out amendments offered from the floor and adopted at second reading, should they be found undesirable at third reading.

<sup>22</sup> Assembly Rule 11.

## ROLL CALLS ON FINAL PASSAGE

Roll call on the passage of each measure is required by the constitutions of thirty-six states.<sup>53</sup> The New England States are exceptions. Among them, however, the ayes and noes may be demanded by a fraction of the members. The constitutional requirement of the roll call on the final passage of bills, or in concurring in amendments, is of doubtful value. The journal of the Ohio House, selected at random from those of several states, records fifty-one roll calls on the last day of the 1915 session, and twenty roll calls were not unusual upon an ordinary day, although there were 121 names on the roll. On the last day of the 1914 session of the New York Assembly there were 208 roll calls, the roll containing 150 names. Similar cases could be multiplied in every state which requires roll calls on final passage. Now it is impossible to call a roll of 150 names honestly in less than fifteen minutes. On this basis thirteen hours would have been so consumed in the House on the last day of the Ohio Legislature and fifty-two hours in the New York Assembly. An ordinary day's session would have to devote five hours to roll calls, for the states have been slow to devise mechanical contrivances for recording votes. Wisconsin led the way at the present session by adopting an electric voting machine.

Roll calls on numerous measures are possible simply because the roll is not called. Go through the journals of any of the thirty-six states mentioned above and you will find measure after measure upon which no dissenting voice was cast. Indeed a real division will occur with conspicuous infrequency. The results of the 208 roll calls in New York to which reference has been made, show that only fifteen record as many as five votes in the negative, and of these only eleven could be called real divisions. Since many measures meet with no opposition, an experienced clerk can tell as soon as he has called half a dozen names whether further call will reveal any negative votes. If none are apparent the rest of the roll is called very rapidly and a member must watch carefully to catch his name, if indeed it be called at all. A skilled clerk of the Pennsylvania House has been known actually to call 207 names in 59 seconds. Under the short roll call of New York, names of but a few members are called by the clerk and the bill is declared passed

<sup>53</sup> Index-Digest of State Constitutions, pp. 844-845.

by an arbitrary number of votes. Several printed slips of about one hundred names are employed for the purpose of making up the journal; they are pasted in the journal and the names thereon are recorded as voting in the affirmative. A member who wishes to go on record in the negative must rise and announce the fact to the clerk, unless he has given notice beforehand, and his name will be crossed off the list and written down on the negative. In order that the records will be consistent members who have been excused for the day are crossed off. Bills are thus passed at the rate of one a minute sometimes with not more than a corporal's guard present.<sup>44</sup> Undoubtedly the spirit of the constitution is violated. What was intended was an honest roll call with opportunity to return aye or no.

Yet perhaps the situation is not so serious as some have declared, for a practice so general must have some survival value. It must be remembered that the quick roll call is simply a method of acting by unanimous consent in cases in which the constitution requires a recorded vote. Usually a member can have a slow roll call if he asks for it, and by the custom of many legislatures may demand its verification.<sup>45</sup> True, insistence upon a slow roll call is apt to be unpopular, for a man's colleagues are impatient to have their measures reached; but here again enters the element of unanimous consent. The use of an electric voting machine would probably increase the number of real divisions, but business by unani-

<sup>44</sup> Mr. Baker, addressing the New York Constitutional Convention of 1867 (Record, p. 1301) said: "I know for a fact that during the last two days of the session the clerk passed more legislation than the body of the House, and it was no uncommon thing to adjourn and leave the city, a majority of the members not knowing upon what bills they had voted." So it appears that the short roll call is no strictly modern invention.

The Committee on Legislation of the New York Citizens' Union (Report for 1908, p. 22) describes the technique. At that session the clerk had four printed lists of names for the sake of variety; the selection of the form to be used seemed arbitrary.

<sup>45</sup> New York is perhaps an exception since the presiding officers sometimes take the ground that there must be a substantial demand for a roll call, else those opposed should be content with being recorded in the negative. (Citizens' Union, Committee on Legislation, Report 1913, p. 5.) Of course there have been instances elsewhere in which the gavel rule of the speaker was very marked and demands of a few members have been disregarded, but such are occasional and grow out of conditions more serious than problems of procedure.

mous consent would continue in the absence of a quorum, since the record of the machine could be modified upon the journal to meet constitutional mandates.<sup>56</sup> If the constitutional requirement of a roll call on any and all measures were abolished, a record of real divisions would still be preserved through the power of a small minority to demand the ayes and noes. During the 1916 session of the Massachusetts House there were but eighty-nine roll calls on all subjects, yet each represented a real division of opinion. The true explanation of the short roll call is found in the anxiety of members to speed up legislation upon which they have not had time to form opinions, and to seek for fundamental reform through new methods of voting is to mistake symptoms for causes.

#### COUNTING A QUORUM

The simple expedient of counting towards a quorum those physically present although the fact is not revealed by a roll call, following Speaker Reed's famous ruling of 1890, is now generally accepted by the states, even finding a place in the rules of a few.<sup>57</sup> Speaker Reed and those who supported him were able to find numerous precedents among the state legislatures.<sup>58</sup> In 1874 the Speaker of the Massachusetts House ruled that the constitutional requirement of a quorum was satisfied by physical presence, and in 1883 the president of the Pennsylvania Senate counted a quorum. Following the punishment in 1882 of a member for contempt in refusing to vote, the more expeditious method was likewise adopted in 1883 by the New York Senate. At the session of 1892 the same body fell back upon the older practice of punishing for contempt members refusing to vote, although it seems evident that the purpose was to find authority for measuring vengeance to three senators.<sup>59</sup> How-

<sup>56</sup> The introduction of an electric voting machine in Wisconsin has been wholly beneficial, inasmuch as the number of roll calls has been increased and life injected into the session generally. Wisconsin requires no roll calls on final passage unless on demand of one-sixth and therefore each is a real division. The time consumed being negligible, the temptation to short roll calls where the machine is used would be materially reduced.

<sup>57</sup> Found in the rules of the Florida, New York and Ohio Senates. By the rules of both houses of Virginia members present but not voting shall on the demand of one be counted in the negative. (House, 69; Senate, 51.)

<sup>58</sup> See Congressional Record, 51 Cong., 1 Sess., pp. 915-916; 1161-1162; 1234. Indiana, Massachusetts, New York, Ohio and Pennsylvania were cited.

<sup>59</sup> See Brooklyn *Eagle*, Jan. 27, 1892.



ever, in 1902 counting a quorum was legalized by specific rule.<sup>60</sup> The legislatures of practically all the states require by rule that a member vote and that failure to do so constitutes contempt, but if threat of contempt should fail the body would doubtless resort to counting a quorum.<sup>61</sup> It is questionable, as Speaker Reed said in a letter to a member of the New York Convention in 1894, whether an assembly has the right to make a man vote. A person with no opinion should not be made to express one; it is enough that he be compelled to acquiesce in the result and the fact of a quorum is not disturbed by his silence.<sup>62</sup>

### ENGROSSMENT AND ENROLLMENT

It is worth while to devote some attention to the preparation of the official copy of bills and to the safeguards employed against dishonest or careless engrossments and enrollments. Except in New England the engrossed copy is the one specially prepared for passage as the authorized bill. Having received the approval of both houses the enrolled bill, now in the form of an act, is made from the engrossed bill. After being signed by the presiding officers of both houses the enrolled measure goes to the governor for his approval. Upon receiving his signature it becomes the official statute. When reading the rules of the New England states, however, it is well to remember that the "engrossed" bill refers to the copy which goes to the governor.

Due to better systems of engrossing and enrolling and the use of the printing press involving checking by expert proof readers, scandals growing out of fraudulent copies are not so common as formerly. In the prosperous days following the Civil War when industry broke into unprecedented activity, the possibilities of special legislation were discovered and special interests often profited through incorrect enrollments. "Such was the pressure upon

<sup>60</sup> It may be noted that as early as 1858 a proposal to incorporate "counting a quorum" in the rules had been made in the Pennsylvania Senate. It was disagreed to because it was not thought that a man could be put down on a quorum until he voted and the method of punishing for contempt was adopted instead.

<sup>61</sup> For example, Michigan House Journal 1899, pp. 993, 1207; and House Journal 1893, p. 1700.

<sup>62</sup> The letter appears in the Revised Record, New York Convention, 1894, vol. I, p. 450.



the legislature that it became the habit to prepare laws for the signature of the governor which had never passed the legislature."<sup>63</sup>

In order to insure purity of text, the rules now generally provide that before final passage bills shall be engrossed under the supervision of a committee. This committee renders very inadequate supervision, the work being delegated to clerks. In New York, where the constitution requires printing in final form before passage, bills are rarely passed without being engrossed by printing. The proof is read by experts who have an office in the capitol. In other states, however, the rule requiring engrossment is often evaded by a motion that the bill be considered engrossed and ordered to a third reading, and thus it is possible for third reading to follow immediately upon second.<sup>64</sup> Where the custom of combining third reading with second prevails, as in Minnesota, Washington and West Virginia, it is impossible for bills to be engrossed; and Washington recognizes this by specifying that all amendments are to be pasted securely on the original bill. Frequently bills are engrossed only in case that they have been altered after introduction; otherwise the copy introduced continues to be official until enrollment.<sup>65</sup> If no engrossed copy is made, the original bill, or a printed copy thereof, in possession of the clerk, with amendments fastened upon it, is official.<sup>66</sup> The plan of Michigan and New Jersey of making one of the printed copies the official bill throughout its legislative career is a good one. It then corresponds line for line to the copies in the hands of the members and the clerk thereby avoids the difficulty of identifying the places for proposed amendments upon a copy different from that in their possession.

The preparation of the enrolled measures, done sometimes by printing, sometimes by typewriter, sometimes in long hand,<sup>67</sup> is

<sup>63</sup> Samuel Dickson in the Presidential Address before the Pennsylvania Bar Association, 1896. See also Debates of New York Constitutional Convention, 1867, p. 1303.

<sup>64</sup> No bills have been engrossed in Iowa since 1907 although the rules prescribe that they shall be. (Shambaugh, "Statute Law Making in Iowa," p. 230.)

<sup>65</sup> The recognized practice in Arkansas, North Carolina, Idaho, North Dakota and Wisconsin.

<sup>66</sup> Connecticut, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia and Washington follow this method.

<sup>67</sup> See Bulletin No. 4 of the Nebraska Legislative Reference Bureau for a table showing methods of engrossment and enrollment in the several states.

likewise supervised by committees which report that they are correctly enrolled. But again the oversight is of the most casual sort. In the Pennsylvania House the committee charged with this function numbers twenty-five, divided into groups of three to expedite the work; but bills are rarely examined by members, the real work being left to clerks, although the official clerk of the enrolling committee is supposed to sign enrolled measures as a sort of voucher. The method of enrollment in Vermont makes it virtually impossible to correct errors which may appear at this stage. The original bill with amendments written or pasted thereon goes to the governor for approval. Later, perhaps after the adjournment of the legislature, the engrossing clerk copies the act into a book, and the presiding officers of the two houses and the governor meet in the secretary of state's office and sign it.

The great defect of most systems occurs in the fact that the real work is not done by responsible men, so that blame for errors can be clearly located. To this end it would be well to make a regularly established state official responsible for correct enrollment. In 1911 the Senate of Wisconsin abolished committees on enrolled and engrossed bills and placed the duty of reporting measures as correctly enrolled upon the chief clerk. It may be suggested that legislative reference libraries could to advantage be entrusted with this responsibility. In South Dakota the chief of the engrossing staff must initial each page as a verification of its correctness,<sup>66</sup> and by the laws of Connecticut the engrossing clerk must certify with his signature that each bill is correctly prepared.<sup>67</sup> By a curious provision of the South Carolina Code, county solicitors are required to attend upon sessions of the legislature to assist in drawing up bills and to supervise engrossment and enrollment of the same. Each bill must be certified by one of these officers as correctly enrolled.<sup>68</sup> Maine, Massachusetts and New Hampshire provide that the work be done in the secretary of state's office. California, Kentucky, New York, North Dakota and Utah have by statute made fraudulent alteration of the enrolled measure a felony and New Mexico by constitutional provision.

The constitutions of thirty-three states require that the en-

<sup>66</sup> Laws of 1909, Chap. 123.

<sup>67</sup> General Statutes (1902), Par. 36.

<sup>68</sup> South Carolina Code (1912), Par. 23.

rolled bill be signed by the presiding officers of both houses, twenty-two prescribing that it be done in the presence of the assembled body.<sup>71</sup> An attempt was thus made to provide an additional guarantee against the signing of bills irregularly passed. A situation which arose recently in Indiana raised the question as to the responsibility of these officers. Two bills which had never passed the legislature were signed by the presiding officers and later by the governor. The grand jury sitting to investigate the responsibility for the affair reported that the speaker of the House and the president of the Senate, who had wrongfully signed the measures, were in no way liable.<sup>72</sup>

Upon the question whether the enrolled bill controls the engrossed bill in case of discrepancy between them, the courts have not been in agreement; although the attitude consistent with the widely accepted principle that the enrolled bill is final, would favor making it the conclusive copy.<sup>73</sup>

<sup>71</sup> Index-Digest, State Constitutions, p. 846. A similar provision failed in the Constitutional Convention of New York in 1894 because it was feared that the presiding officers would be invested with the veto power. (Record, vol. I, pp. 906 *et seq.*) The prevailing opinion of the courts has been, however, that failure to sign in no way invalidates the act, as the only function of the signatures is to furnish evidence in the absence of which recourse may be had to the journals. *Commissioners v. Higginbotham*, 17 Kan. 62; *Taylor v. Wilson*, 17 Neb. 88; But see *Burrill v. Com'rs*, 120 Ill. 322; and *Douglas v. Bank*, 1 Mo. 24; also *State v. Kiesevelter*, 45 Ohio St. 254, where the provision was held mandatory.

<sup>72</sup> From the text of the report of the grand jury to the Governor. *Indianapolis News*, Dec. 5, 1914.

<sup>73</sup> So held in *Division of Howard County*, 15 Kan. 194. But see *contra Berry v. Railroad*, 41 Md. 446; *Brady v. West*, 50 Miss. 68. Also *Moog v. Randolph*, 77 Ala. 597. Where material divergence exists between the engrossed measure and the enrolled act the bill approved by the governor is not the one which passed the houses and therefore never became law. In *State v. Swan*, 7 Wyo. 166, one section of the act was void as being enrolled by mistake.

## CHAPTER VI

### LEGISLATIVE LEADERSHIP

We must finally examine the preparation of a daily legislative program, to discover how far the houses follow a fixed arrangement of business. The question of the control of the time of the house and the extent to which individual members have surrendered themselves to the guidance of leaders is involved. The matter of controlling the limits of debate necessitates no complex system of rules since a minority anxious to discuss measures is absent. With the exception of the rush days at the close the houses do not surrender control of their time to any special group. The legislatures of Georgia and Washington are perhaps exceptions in that from the first of the session the calendar of the latter is under the jurisdiction of the rules committee, while in the former all motions to interrupt the regular order must be referred to the same committee.<sup>1</sup> In the Georgia Senate no request for unanimous consent to suspend this rule will be heard.<sup>2</sup>

#### THE CALENDAR

The daily program takes the form of a calendar upon which measures appear in the order in which they are to be taken up. Appropriation bills sometimes have preference by being placed at the head of the list.<sup>3</sup> Usually the calendar is printed daily, although sometimes it is merely posted as a bulletin, as in Nebraska, Nevada and South Dakota. In some of the more backward states as Arkansas, Indiana, Montana and North Carolina, the clerk merely keeps a list of measures in their regular order.

The evils of such a lax method are twofold. Great power over the calendar is put in the hands of the speaker inasmuch as with him rests the selection of bills to be handed down for the consideration of the house. He is consequently enabled to reserve measures until an opportune time, either favorable or unfavorable to their

<sup>1</sup> Washington House Rule 2; Georgia House Rule 42, Senate Rule 137.

<sup>2</sup> Senate Rule 40.

<sup>3</sup> Georgia, even over special orders; Kansas, Mississippi under the constitution, and Pennsylvania.

passage, without the members being much the wiser. In the second place the members are ignorant of the time at which bills are to come up. The absolute right of members to be informed in advance as to what business is to come up really constitutes the essential reason for the daily printed calendar. As a select committee of the Commons declared in 1861, certainty from day to day of the business to be transacted is the great aim of procedural reform. Each member, furthermore, should be able to rely upon the carrying out of the program laid down.<sup>4</sup> Nevertheless, slight investigation will reveal that our state legislatures have attained this ideal very imperfectly. Although as a rule, matters not upon the calendar are denied consideration, a few states, however, reporting to the contrary that business not upon the calendar is often taken up,<sup>5</sup> the value of the calendar as a program of the day's activities is materially lowered by the general custom of admitting measures to consideration out of their regular order. The practice of granting leave to take up measures ahead of their turn obtains generally in states in which the calendar is allowed to become overcrowded. If steering committees are not employed, calendar rules are practically disregarded the last few days of the session. For example, in one day, selected at random about two weeks from the end, the Illinois House by unanimous consent suspended the regular order thirty-two times, permission to suspend being withheld but twice.

The force of the calendar is also weakened by "passing" a measure when it comes up in its regular order. If such practice prevails, there can be no certainty that a measure will be acted upon when reached. In many legislatures a member to secure consideration for a bill must call it up at the debate stage, but if he thinks the time inopportune he neglects to do so and another than the sponsor will not usually request its consideration. By the rules of Pennsylvania a bill may be passed for two weeks before, being dropped from the calendar.<sup>6</sup> Pennsylvania also keeps a postponed calendar of bills on third reading on which a measure goes at the

<sup>4</sup> Report of Select Committee of the Commons on Business of the House, 1861, pp. iii-xii. Cited by Redlich, "Procedure of House of Commons," vol. I, p. 98.

<sup>5</sup> Alabama, Arizona, Minnesota, Nebraska and New Jersey. Oklahoma enforces the calendar strictly but reserves some time just after convening and before adjourning for consideration of matters not on the calendar.

<sup>6</sup> House Rule 35.

request of the sponsor, who is thus given a chance to marshal his forces and to seize a more promising moment later to put his measure to vote.<sup>7</sup> Members avail themselves of this privilege frequently. Missouri possesses the same device in an "informal" calendar. In those states in which custom permits a measure on the calendar to come up automatically in its turn without the necessity of a member calling it up for consideration, it is usual to "pass" a measure if there is a request to do so, although in some cases it may lose its favorable position on the calendar. Ohio practice, however, permits a bill "passed" on the calendar by a majority vote to be placed at the head of the list for the day following.<sup>8</sup> A blanket motion may extend this favor to over one hundred measures at a time and thus disturb the order most effectually. A bill "passed" on the calendar once in Connecticut or twice in California is sent to the foot unless saved by a two-thirds vote.<sup>9</sup>

In accordance with the principle that a member should know with a great degree of certainty what measures are to come up in the day's business, a simple majority should not be able to violate the regular order without due notice. It has sometimes been urged by those who had in mind meritorious legislation which failed because the majority could not act immediately as they desired, that the majority should at all times be master of the time of the house by being able to change the order of business at any time.<sup>10</sup> But the minority also deserves protection from the snap tactics of the majority, and to this end notice of all motions to suspend the calendar should be imperative. Due notice having been served in advance, a simple majority would be sufficient to carry the motion. This is the practice in New York.<sup>11</sup> The rule prevailing in some states, making necessary a two-thirds or three-fourths vote to suspend the order, gives undue power to the minority, who are entitled to no such consideration if they have been properly notified.

<sup>7</sup> House Rule 68. Since the session of 1913 measures not called up from this calendar within five days are dropped.

<sup>8</sup> Joint Rule 21 and House Journal 1915, p. 1117.

<sup>9</sup> Connecticut House Rule 9, Senate 22; California Assembly Rule 14, Senate Rule 40.

<sup>10</sup> Urged by Illinois Voters' League (*Bulletin*, Nov. 20, 1914) and adopted in Illinois in 1915. The majority in the lower house must be absolute. Haines, "Minnesota Legislature of 1909," recommends the same.

<sup>11</sup> Senate Rule 44, Assembly Rule 45.

Much could be done towards introducing order and certainty into the proceedings of the houses by improved methods of compiling the calendar. Broadly speaking, all contemplated actions which could possibly give rise to discussion should appear on the daily printed program. This means that all bills on second reading, third reading or final passage should be shown. If second reading occurs before reference, the report of the committee should go on the calendar before it is acted upon inasmuch as debate is likely to occur at this stage. Yet the calendars of some states, as Alabama and Iowa, show bills only on third reading. When measures are referred to the committee of the whole, general orders should be included in the calendar as is done in Arizona, Kansas, Michigan, Minnesota, Oklahoma and the New York Senate. A material defect of the Massachusetts calendar is its failure to show measures up for final passage, a step, which, it will be recalled, does not occur until the bill has been returned from the other house with engrossment concurred in. Although final passage is thus rendered largely perfunctory it is the crowning stage of the bill's career and setting the time at which it is to occur should not be left so completely in the hands of the speaker. As noted above, however, the speaker will inform any interested member of the time at which a certain measure is to come up.

Measures should be set forth by title, as is done generally, and not by number merely, as in Illinois, Maryland and New Jersey. If bill dockets or bill indexes are published regularly a complete history of the bill is superfluous, but brief summaries, as included in the calendars of California and Iowa, would act as a ready reference. If a bill has been amended at any time the fact should be noted and, if copies of all amendments are not placed in proper order in members' files by clerks, citations to the pages in the journals where they may be found should be included. Vermont calendars include such citations, but Massachusetts goes farther and prints all amendments in full in the calendar, thus guaranteeing that they shall be available to members at the time action is to be taken thereon. It goes without saying that all special orders should appear on the calendar and that all that has been said about bills applies with equal force to resolutions.

There remain three other orders of business of which members should be advised beforehand since they will be called upon to assert



an opinion upon them. First, reports of committees recommending amendments should appear in full on the calendar before adoption. As pointed out above, this is absolutely essential if the report stage is likewise the debate stage. But even if debate should be postponed and the committee's report adopted indifferently, members should be warned of proposed changes which may alter the very nature of a bill.

In the second place, following the example of Wisconsin, motions to reconsider should be required to hang over one day and should find a place on the calendar. Other motions which must lie over one day, such as a motion to discharge a committee, likewise appear on the Wisconsin calendar under the head of "Motions for Consideration," while Arizona, after the manner of Congress, maintains a calendar of motions to discharge committees. It will be recalled that the practice of Parliament requires that a notice of motion must be given for practically all orders of business.

And finally, amendments made by the second house to bills which have already passed the first should appear on the calendar. Concurrence by the house in which the measure originated in amendments of the other may be a crucial point in the career of the bill, and it should not be treated in the loose manner which generally prevails. The Vermont practice by which such amendments appear in full on the calendar is to be commended. Reports of conference committees should receive similar consideration. It is submitted that, were the calendar compiled along the lines set forth here, a considerable influence would be set at work to compel adherence to a previously arranged program.

With two or three exceptions no effort has been made to distinguish between different kinds of legislation on the calendar. As noted above a very few give a preferential place to appropriation bills. Separation of private and general bills would be a distinct gain as tending to call attention to their different natures. In 1895 the Governor's Commission of the New York Legislature recommended that three calendars be adopted, viz., a private and local calendar, a cities calendar, and a general calendar; and that certain days be set apart for certain calendars. Mondays and Saturdays were to be devoted to private and local measures, thus keeping interested ones at the capitol over the week-end and reserving more

general legislation for mid-week when a full house would be present.<sup>12</sup> The calendar of the Maryland Senate recognizes the principle to the extent of grouping local and general bills separately on the calendar. In those states which still retain the committee of the whole no general principles regarding the nature of the measures to be placed on "General Orders" are applied. Late in the session this calendar often becomes a graveyard for most bills which have been unable to escape it, and growing large because not disposed of, serves as a place where a few measures of doubtful virtue may be held for the purpose of passing in a hurry at the close.<sup>13</sup>

The value of the calendar would be much enhanced if it were placed in the hands of members one day before matters thereon are to be considered. Urged repeatedly in New York, this has been adopted in Wisconsin.<sup>14</sup> According to the rules of Connecticut also, matters must appear on the calendar one day before being taken up. When ready for action they are marked with a cross. Thus a measure which has been on the calendar for one day will thereafter be "starred for action." The value of the rule in Massachusetts requiring matters to lie over one day before action has been much enhanced in the Senate by the practice of publishing on the calendar all matters which are to appear on the orders of the day on the morrow.

Zeal and perseverance in clearing up the calendar at each sitting would go far towards relieving the congestion so generally attending the closing days. Nevertheless it is the almost universal report that no effort is made to clear the calendar each day. Work consequently is allowed to accumulate until the calendar no longer sets forth a daily program but serves merely as a docket from which the house may select matters for consideration. The third reading calendar of the Alabama House for the twenty-sixth day of a recent session held almost 250 measures, and the calendar of the Kansas Senate for the same day of the session showed more than 400 matters upon which that body was supposed to pass judgment. Other

<sup>12</sup> New York Assembly Document, 1896, No. 20. This feature was introduced as an amendment to the rules by the Progressives at the 1913 session but was defeated. (Ass. J. p. 15.)

<sup>13</sup> See Michigan Constitutional Convention Debates (1907-1908), p. 147. In the New York Senate reference to the committee of the whole towards the close of the session is a polite way to kill a measure.

<sup>14</sup> Senate Rule 19, House Rule 21.

examples likewise chosen at random could be multiplied in many states. Serious attention towards keeping abreast of the daily program would do much to obviate the need for sifting committees and for the general suspension of the calendar rules as the session grows old. Pressure would in turn be placed on the committees to assure that they were making consistent progress in their work. Legislatures which for the sake of orderliness enforce the rule that committees must make final report on all matters midway in the session of course find it impossible to clear the calendar for weeks after the expiration of the time, but where the introduction of new measures and reports of committees continue until late it is imperative that the work assigned each day on the calendar be completed. It is deplorable that measures should ever be allowed to die on the calendar. If they are trivial they should never get out of committee, but once out they deserve a decision by the house.

Massachusetts avails herself of a simple plan to aid her in disposing of routine business on the calendar. It has been the experience of many states that matters on the calendar giving rise to prolonged discussion may precede much routine business and that consideration of the latter is delayed as a consequence sometimes for days. Massachusetts treats as unopposed business those measures on which members do not indicate a wish to debate or amend. As the calendar is called, such matters are disposed of in the routine manner. After the calendar has once been gone through, the speaker returns to measures which members have indicated a desire to discuss. Transaction of routine business accordingly proceeds rapidly and is not allowed to accumulate on the calendar.

#### CLOSING DAYS OF THE SESSION

The evils of the glut of legislation so general during the closing days are too well known to merit discussion here. Remembering that the journals are records of things done, it is interesting to examine the report they give to see how the burden of work is distributed throughout the session. The Journal of the New York Assembly of 1914 devotes all of the second volume to a record of the last six days. As noted above, there were 208 roll calls on the last day. On an average day near the end, the Assembly passed fifty-nine bills and advanced forty-four. The final day of the 1915 session of the Ohio House saw forty-three measures passed and the

adoption of the conference report on the general appropriation bill containing 347 amendments. At the same session of the Illinois House the work accomplished the first four months fills 740 pages of the journal; that of the last month requires 642 pages to report. Nor were the earlier months spent in discussion on the floor, for the verbatim reports of debates during the first four months fill 625 pages while those of the last month fill 655 pages. Furthermore the time was not consumed in committee deliberations, for 40 per cent of the committee reports were rendered during the last month. The House simply did not settle down to work until four months of the session had passed. It is generally recognized that the first few weeks of many sessions are wasted. In 1915 the New York Legislature after sitting six weeks had passed eighteen measures, although 1565 had been introduced. In 1916, fourteen measures were passed during the same period, 1314 having been introduced.<sup>15</sup>

The congestion at the end is not confined to the large states. The Idaho House passed or rejected fifty-three measures in one day at the close of a recent session.<sup>16</sup> Montana reports an equally serious situation, and it has been estimated that in past years from 80 to 90 per cent of the business of the North Carolina Legislature has been ratified the last ten days.

The remarkable thing is that no means have been developed to remedy a condition which is partly due to lack of effective organization throughout the session and is partly psychological. Concerning the latter aspect of the situation it may be said that members are anxious to get home, their financial remuneration seldom compensating them for their absence from business. The spirit of procrastination, so strong during the early days, must now be atoned for by frenzied action in midnight sessions. Unanimous consent is granted promiscuously if business will be advanced thereby. The only visible hope lies in greater speed. Even if a time limit upon the introduction of new measures has been enforced the calendar becomes congested unless the committees and the house have moved expeditiously throughout the session.<sup>17</sup> Amid

<sup>15</sup> From a table prepared by the *New York Times*, Feb. 21, 1916.

<sup>16</sup> The Governor's Message to the Twelfth Legislature.

<sup>17</sup> A real advantage flows from the enforcement of such a rule to the extent to which it prevents the introduction of entirely new measures at the close preparatory to hasty passage. Bills have often been known to have been brought

such conditions a steering committee is preferable to a general suspension of the calendar because some measure of responsibility can be exacted. The constitutional provision requiring readings on three separate days, if absolute, prevents bills passing from one house to the other within three days of adjournment; but the Indiana clause which prohibits transmission to the governor on the last two days of the session merely advances the congestion forty-eight hours. A rule proposed by the Progressives of the New York Assembly in 1913 would have marked a real advance. Private and local bills were to be in order on the calendar only during January and February, leaving at least two months for action on general measures solely.

Massachusetts avoids the tumult of the last days more successfully than do other states, and it is worth while noting the means by which she accomplishes it. In the first place, there is no limit upon the length of the session, and the legislature seldom adjourns before July. Well-informed persons state that if the session were shortened, as it is by the constitutions of some states, congestion at the end would be unavoidable.<sup>18</sup> In the second place the exceptionally strict time limit upon the introduction of bills, none being received as a rule after the second week, makes possible the enforcement of the provision that committees must report out all measures early.<sup>19</sup> The legislature knows by the middle of April at the latest how much business remains to be accomplished. Furthermore the healthy rivalry of committees in efforts to keep their slates clean is an incident of the high development of the committee system in Massachusetts. Close record is made each week of the progress of work in committees, which is compared with similar periods of previous years, so that the presiding officers are enabled to apply pressure where necessary. Summing up, we may say that the legislature of Massachusetts makes sure that all the in the last forty-eight hours, which their proponents would not have dared to present unless they knew business had so accumulated that no one would have time to examine them.

<sup>18</sup> The Wisconsin Legislature, which maintains order to the end, continues in session from January through July or later.

<sup>19</sup> Massachusetts Joint Rule 12. There is commendable hostility towards the suspension of this rule. Concurrent action by four-fifths majority of each house is necessary to suspend it.

business which is to engage the session is introduced at the very first. Committees at once get busy and continue so in order that they may return their reports promptly. And finally, the houses continue in deliberation a sufficient length of time to insure that their work will be completed without confusion or disorder.

#### LEGISLATIVE LEADERSHIP

The constitutional fathers were so intent upon removing the legislature from executive control that the problem of legislative leadership seems never to have arisen in their minds, yet it has been the absence of responsible and definite direction within the body which has necessitated the development of leaders outside who, hidden from public view, have turned the opportunity into a source of private gain. Our state legislators are but human beings of little or no legislative experience, who are usually as amenable to good leadership as bad; but led they must be and the boss has filled a real need. The legislatures, moreover, have done nothing to develop from among themselves leaders who shall be responsible as such to the people, and the public is suffering from the resulting aimlessness of legislative activities. Members are as the blind leading the blind. Willing to follow, they can find no one to guide them.

A study of any of the journals discloses the fact that the bodies lack a consistent purpose. Members are not able to follow a constant policy, since they vote on many matters on which they have no opinion. This truth is illustrated in the number of actions which are reconsidered and, what is more noteworthy, in the number of definite decisions which are reversed. What leadership the houses enjoy is provided by the speaker and a few prominent committee chairmen, who stand forth partly because of their experience or force of personality, partly because of the position gained by them under the rules, and partly because of their position in the party hierarchy. Their control is often arbitrary and rarely systematically constructive. This latter quality has not been necessary because they have never been responsible to public opinion as recognized leaders.

#### THE SPEAKER

Remembering that discussion here must be confined to that phase of legislative leadership which is related to questions of procedure, we may note that the member standing out predominant



as the party chief is generally the speaker. The power which he derives from committee appointments and the reference of bills has been tampered with but little, as has been shown above. His powers through recognition of members wishing the floor are extensive since so large a volume of business is conducted by unanimous consent. Usually in refusing recognition therefor, aside from extreme cases of arbitrary and irregular conduct, he merely exercises the parliamentary right of any member to object to the suspension of the regular procedure by unanimous consent. But because of his position, the speaker can use this right to enforce discipline, when an obscure member would only incur the hostility of his colleagues.

Gavel rule, under which the speaker refuses to hear objections to unanimous consent or to recognize demands for roll calls, has probably been a subject of complaint at one time or another in all our states. In this the speaker is aided by the confusion generally prevailing on the floor at critical times. An example of extreme control is furnished by the fact that a statement reported to have been made by the speaker, that there would be no more roll calls on dry measures permitted in the House, was accepted as final by the Senate.<sup>30</sup> A method of gavel rule requiring more finesse is to utilize a ruling on a point of order to bring about the desired result. The inexperience of the majority of members in parliamentary practice plus the element of party solidarity leads to general agreement

<sup>30</sup> Illinois Senate Debates, 1915, p. 507. A typical case of gavel rule occurred in the Pennsylvania House of 1911 and is fully set forth in the *Legislative Journal*, p. 3028. A joint resolution was up to amend the Constitution to provide for the initiative and referendum. It failed on third reading by a close division without record of votes, the speaker not heeding the call for the ayes and noes, after which the following colloquy took place.

MR. KELLY (on a question of personal privilege): "Mr. Speaker, I called for the yeas and nays on House Bill No. 758 before House Bill No. 771 was taken up."

SPEAKER: "The gentleman was not then recognized. The gentleman's objection will be entered on the journal."

MR. BALDWIN: "Mr. Speaker, I rise to a question of personal privilege."

SPEAKER: "The gentleman will state his question of personal privilege."

MR. BALDWIN: "I desire to have it noted that when the gentleman from Allegheny (Mr. Kelly) called for the ayes and noes on agreeing to House Bill No. 758 on third reading, I seconded the call."

SPEAKER: "It will be so noted on the journal."



with the speaker's ruling. Thus, a clever speaker can frequently avoid a direct vote upon a measure, which the organization wishes to kill, by skilful rulings on incidental motions or on points of order. Furthermore, by choosing the time at which to "hand down" for consideration matters which do not appear on the calendar, the speaker may secure the success of measures which would doubtless fail were the house warned beforehand. A prominent instance of the use of this means to defeat a measure occurred in the New York Assembly of 1912 when the speaker refused to hand down a resolution from the Senate requesting the return of a bill in order that a beneficial amendment might be incorporated. Through the action of the speaker the bill became law without the house having opportunity to act upon the amendment desired by the Senate and fathered by the Civil Service Commission.<sup>21</sup> The power to appoint steering committees materially increases the centralization of control in the hands of the speaker. He may be ex officio chairman of this committee, as in New York where he reports the daily program.

The situation sometimes arising when the president of the senate is not a member of the majority party emphasizes the partisan nature of the presiding officer's position. The article in the Constitution of New York which empowers the president pro tem to act when the lieutenant-governor "shall refuse to act as president" was inserted because of an experience in which the lieutenant-governor refused to put the question on seating a member. Only after much disorder did the president pro tem succeed in putting the question and was sustained by the majority.<sup>22</sup> At the 1915 session of the Illinois Senate the lieutenant-governor aided and abetted a filibuster by refusing to recognize members other than those of the obstructing party and by refusal to hear demands of the majority for roll calls.<sup>23</sup>

#### THE FLOOR LEADER

The degree to which whatever guidance may exist is entrusted to the speaker is witnessed by the small place generally held by the recognized floor leader. Indeed, many legislatures do not recognize a floor leader other than informally. The chairman of a prom-

<sup>21</sup> Report of Committee of Citizens' Union, 1912.

<sup>22</sup> For full account see Senate Journal, February 5, 1894.

<sup>23</sup> See Illinois Senate Debates for March 11, 1915.

inent committee, such as judiciary or appropriations, may be the tacit leader, but his position depends largely upon the man, and he may see his leadership settle upon someone else with a stronger grasp of affairs. Occasionally the caucus will appoint a leader, although it may simply recognize the caucus chairman as such.<sup>24</sup> But motions to establish a floor leader are infrequent. In Massachusetts the chairmen of the three most prominent committees are recognized by having special seats assigned to them by the rules, and one of the number, the chairman of the rules committee, is supposed to be the speaker's spokesman.

In any case the rank and file of members follow instinctively a few prominent men who hold chairmanships of important committees. They are the men who are most frequently granted unanimous consent to advance their measures out of order. The obscure member rarely asks for it, perhaps because it is difficult for him to secure it. At least the most numerous instances of refusal follow requests by the rank and file. The point to be emphasized is that the men who direct the course of the deliberations receive but occasional and slight recognition from the rules and entirely escape public responsibility for the failures of the legislature.

New York is one state in which the floor leader is coming into a recognized position of power. Since 1915 the leaders of both parties have received the endorsement of law by acts appropriating money for their clerical and stenographic expenses.<sup>25</sup> At that session the Senate caucus of the majority party, although the Senate is a small body of fifty-one members, early in March named a committee of seven to shape party policy without the action of the caucus. Four days later the chairman of this committee received authorization from the caucus to appoint sub-committees to prepare all important measures for final passage.<sup>26</sup> He was likewise the president pro tem of the Senate, chairman of the rules committee which reported special orders at any time, ex officio member of the three leading committees, and possessed of the power to refer to the finance committee, of which he was a member, any money bill reported from another committee. It will be seen that, as far as the Senate was concerned, the majority leader was made dictator

<sup>24</sup> For example, Kansas, Oklahoma and New Jersey.

<sup>25</sup> For example, Chap. 726, Laws of 1915, granted the leaders each \$2500 expense money.

<sup>26</sup> *New York Times*, March 14, 17, 1915.

and the standing committees were virtually superseded by the small caucus sub-committees of his choosing.<sup>27</sup>

The majority leader of the lower house of New York also holds a well defined position sufficiently strong for him to take issue on occasion with the speaker. In the 1915 session he frankly accepted responsibility for the party's record, and in asking the caucus for a committee to advise and assist him in examining legislation which the party would sponsor, set forth his policy thus:

As majority leader in the Assembly it will be my best effort as far as possible to carry out the general principles of coöperation; to represent the sentiment of the majority of the Republicans in this legislature as expressed in conference, and to obtain such advice as may be gained from the speaker and from the other Republican members, whose suggestions I shall not only gladly receive, but gratefully solicit.

This is as near as any legislature has come to developing responsible leadership. The newspapers followed the actions of the leaders closely and their movements were given wide publicity. To this extent only were they as leaders placed under any liability to the people at large.

#### EXECUTIVE LEADERSHIP

The legislatures have been even slower to grant the executive the function of leadership than to raise up responsible leaders among themselves, yet in many respects the governor is well fitted to lead. More than any member he represents the state as a whole; his outlook is state wide, and the popular mind is fast placing upon him accountability for the fulfilment of party pledges. Of late several governors have undertaken to maintain themselves as the recognized party leaders, but with varying degrees of success, and a reaction seems to be setting in against "executive usurpation."<sup>28</sup>

<sup>27</sup> The Senate of 1915 went further than usual in consolidating control in a leader, due probably to the presence of an obstructive minority. The majority party had just come into power and by a series of ripper bills were trying to restore their control over government officers. For this reason the majority were willing to go far in sacrificing individuality to organization.

<sup>28</sup> For example Governor Cox of Ohio was defeated by a platform which deprecated the governor's assumption of leadership in legislation. At the 1915 session Governor Willis carried out his promises of hands off and the legislature drifted. In this connection see article by J. W. Garner "Executive Participation in Legislation as a Means of Increasing Legislative Efficiency," *Proceedings American Political Science Association* 1913-14. References to numerous other articles on the subject are there given.

Formal attempts of the executive to establish himself as leader of the legislature have usually failed, and he has had to trust himself to the power of his personality and the share in legislation granted him by the constitution. Some have not hesitated to use the patronage freely for this purpose, but regardless of how praiseworthy it may have been in special cases, the considerations which should control executive appointments are subverted.<sup>19</sup>

A rule adopted in the Illinois House of 1913 has been widely discussed in this connection. The rule gave precedence to administration measures over everything except appropriation bills, and Tuesdays were set apart for their special consideration in the committee of the whole. The purpose as expressed by the author was to impose upon the governor an obligation for a legislative program and to make for party responsibility and party government.<sup>20</sup> Yet the rule never worked and was not continued at the next session of the legislature. In the opinion of the author it was not given a fair trial and failed because of the members' jealousy of executive power, because of the influence of precedent on account of which the House could not adjust itself to the new arrangement, and because of a general disregard for all rules specially marked in a session under the direction of an inexperienced speaker. At the subsequent session the majority in the House were of a political faith opposed to the governor, and personal antagonism as well as political considerations caused the rule to be dropped. The point to be made here is that such a rule is not apt to be given a fair trial under present conditions. For one thing, members feel that it is not in conformity with the spirit of the constitution. Anxious to secure passage of measures in which they were interested and jealous of their prerogative, the Illinois House felt that the governor wished to monopolize the time of the body. The essential bond of sympathy was lacking and the relation seemed to involve unwelcome subordination on the part of the House.

Indeed any effort on the part of the executive to direct legislation calls out opposition from the legislative bodies in which the governor is apt to be worsted. At a recent session of the Pennsyl-

<sup>19</sup> For the governor's legal powers in legislation see J. M. Mathews, "Principles of American State Administration," Chap. III.

<sup>20</sup> See article by Morton D. Hull, *American Political Science Review*, May, 1913.

vania Legislature a joint committee was appointed to confer with the governor upon certain important reform measures for the passage of which the governor had assumed personal responsibility in his campaign. On its face the action of the legislature indicated a recognition of the governor's leadership and a desire to coöperate with him. In reality its purpose was to take charge of the governor in order that certain legislation might be drafted in accordance with the wishes of the organization. The Senate created a committee on executive appointments to deal exclusively with the governor's nominations, and it is significant that all the Senate members of the joint committee to confer with the governor had places upon this committee. Thereafter he was kept in line by threats to refuse concurrence in his appointments. At the session of the same year, the New York Senate similarly prepared itself against possible executive encroachments by a new rule that all executive appointments should be referred to the finance committee, already the all powerful Senate committee. Attempts to control appointments in this manner are as contrary to the purpose of the constitution as are the efforts of the governor to coerce by patronage and veto. Through the transference of the substance of the appointing power to members of the legislative branch the principle that executive appointees should owe their places to the governor is perverted. The necessity of confirmation by the Senate has always been viewed as rightfully no more than a check upon flagrant abuse of executive power and in no wise to control it.

In at least two states opposition to the use of the patronage has found expression in the statute law. A member who promises the governor to give his vote or influence for or against a bill in consideration that the governor approve or veto any measure or make a certain appointment is made guilty of a felony.<sup>31</sup>

Some degree of coördination is maintained by reports of administrative heads submitted to the legislature, and by appearance of administrative officials before legislative committees. Here the use of the committee of the whole might be extended with profit, as is being done in Wisconsin, to bring executive officers before the entire body. Indeed, it should be the right of the head of each department to be heard. Yet the value even of legislative docu-

<sup>31</sup> North Dakota, Compiled Laws (1913), par. 9331, 9332. Utah, Laws of Utah (1907), par. 4099, 4100.

ments containing reports of departments or commissions is often destroyed through delay in publication. Too often they are not available until late in the session. If such reports are to be made the basis of legislation they should be in the hands of members a month before the session convenes, nevertheless their publication is sometimes delayed until after adjournment. In this connection it would be well to make sure that sufficient time can elapse before the close of the official year and the convening of the legislature to prepare reports that can be of service to the legislators early in the session. In Kansas and South Dakota the official year closes June 30, and reports of departments are always available at the opening of the legislature. Where the year does not close until November or December, as in Missouri, Ohio and Pennsylvania, official documents may be long delayed. Yet Massachusetts contrives to get important reports into the hands of the legislature early in January although her year does not end until November 30.

#### LEGISLATIVE RECORDS

There remains a word to be said concerning the means by which the work of the legislature is made public, for it is important that the people be readily informed of what is going on in time to urge or oppose pending measures. The publication of legislative bulletins or bill indexes giving the status of all matters can do much towards clearing up committee evils as well as enabling the public to follow the course of measures easily. At the sessions of 1913, bulletins giving the history of bills with their status at the time were issued at more or less regular intervals in thirteen states.<sup>22</sup> These were cumulative and with rare exceptions were issued weekly.<sup>23</sup> They were available to the public either gratuitously or upon payment of a small fee. California went so far as to put out a daily supplement. A few states have so organized committee procedure as to be able to announce bulletins of committee hearings.<sup>24</sup> Local newspapers in that case announce the more important hearings and in Massachusetts certain newspapers publish a daily program of

<sup>22</sup> California, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Texas, Washington and Wisconsin. In Indiana, Michigan, New Jersey and South Dakota the legislative libraries kept a card index open to the public.

<sup>23</sup> Connecticut, Nebraska and Texas did not issue weekly indexes.

<sup>24</sup> Weekly in New York and Wisconsin; semi-weekly in Massachusetts.



all. Additional light is thrown upon the legislature's activities by the circulation of copies of all bills, resolutions, et cetera. In at least four states copies of all measures will be mailed to applicants either gratuitously or under a nominal fee.<sup>35</sup> Information as to what is taking place in the legislature need no longer be the monopoly of a favored few, and the old claim that a paid lobby was necessary if persons interested were to know the progress of business no longer stands.

Unfortunately for the public good the legislatures keep but incomplete records of their proceedings. As a consequence of Parliament's struggle with the king, the journals, which had come to include notes on speeches, became merely a record of things done and not of things said. The Commons resented the king's calling for reports of their debates and checked the note-taking propensities of the clerk.<sup>36</sup> With three exceptions the meager record of the journal is all we have in our state legislatures today. Maine and Pennsylvania have for some years published a stenographic record of all proceedings including votes, and in 1915 Illinois began the publication of verbatim reports of debates. These examples could well be followed by all states. From such records the people can be more fully informed why the legislature passed some bills and why it refused to pass others. The dignity of the session, moreover, would be enhanced if members realized that everything which took place on the floor would be permanently recorded.<sup>37</sup>

The journal, being the only record of which the courts will take cognizance, if indeed they go back that far, should be inspected with care in order that all errors may be eliminated. The importance of the printed journal is increased when it is remembered that

<sup>35</sup> In New Mexico they are free to those placed on the mailing list by members. In New Jersey and Virginia upon payment of ten dollars; in Wisconsin twelve dollars. They are generally free to the press.

<sup>36</sup> Sir Courtenay Ilbert in the Introduction to Redlich, "The Procedure of the House of Commons," pp. ix, x.

<sup>37</sup> New York published a record for two years, 1888 and 1889, but the expense was felt to be too great to continue it. The constitution submitted in 1915 contained a provision that full reports be published, which had been strongly advocated before the convention by Mr. Root. (See Record of the Convention, p. 3750.) A similar proposal failed the same year in the Michigan Legislature (H. J. p. 418 it had passed the Senate). Members do not seem anxious to perpetuate the memory of their legislative activities.



the reading of the manuscript journal is universally dispensed with, and the printed copies are the only check available to members. With the exception of a few states, chiefly in the South, copies of the journal appear on the desks of the members the next morning. Sometimes as in New York and Pennsylvania, the printed copies do not reach the members regularly and the journal is approved officially without examination by anyone.<sup>10</sup> Near the end of the session, when adjournment comes late at night, it may be impossible to have copies on the desks promptly the next morning but official approval should be withheld until members have been given a chance to examine them. About a dozen states employ a standing committee to report upon the correctness of the journal. But like committees on engrossment and enrollment this committee is not apt to expend much effort in inspecting the journal, although even most conscientious examination by three men may overlook errors which they can hardly be supposed to recognize. The legislature of Wisconsin substitutes for the old order, "Reading and Approval of the Journal" the new order, "Correction of the Journal," and the Minnesota Senate has gone one better by making the correction of the journal in order at any time throughout the next day's session. In this way every member has full opportunity to know that actions in which he is interested have been correctly spread upon the record.

<sup>10</sup> In New York as a matter of fact the clerical force never has the matter ready for the printer on time and only a small part of the journal ever gets on the desks of members, yet the reading of the manuscript is always dispensed with. (Reply to Nebraska Questionnaire, 1913.)

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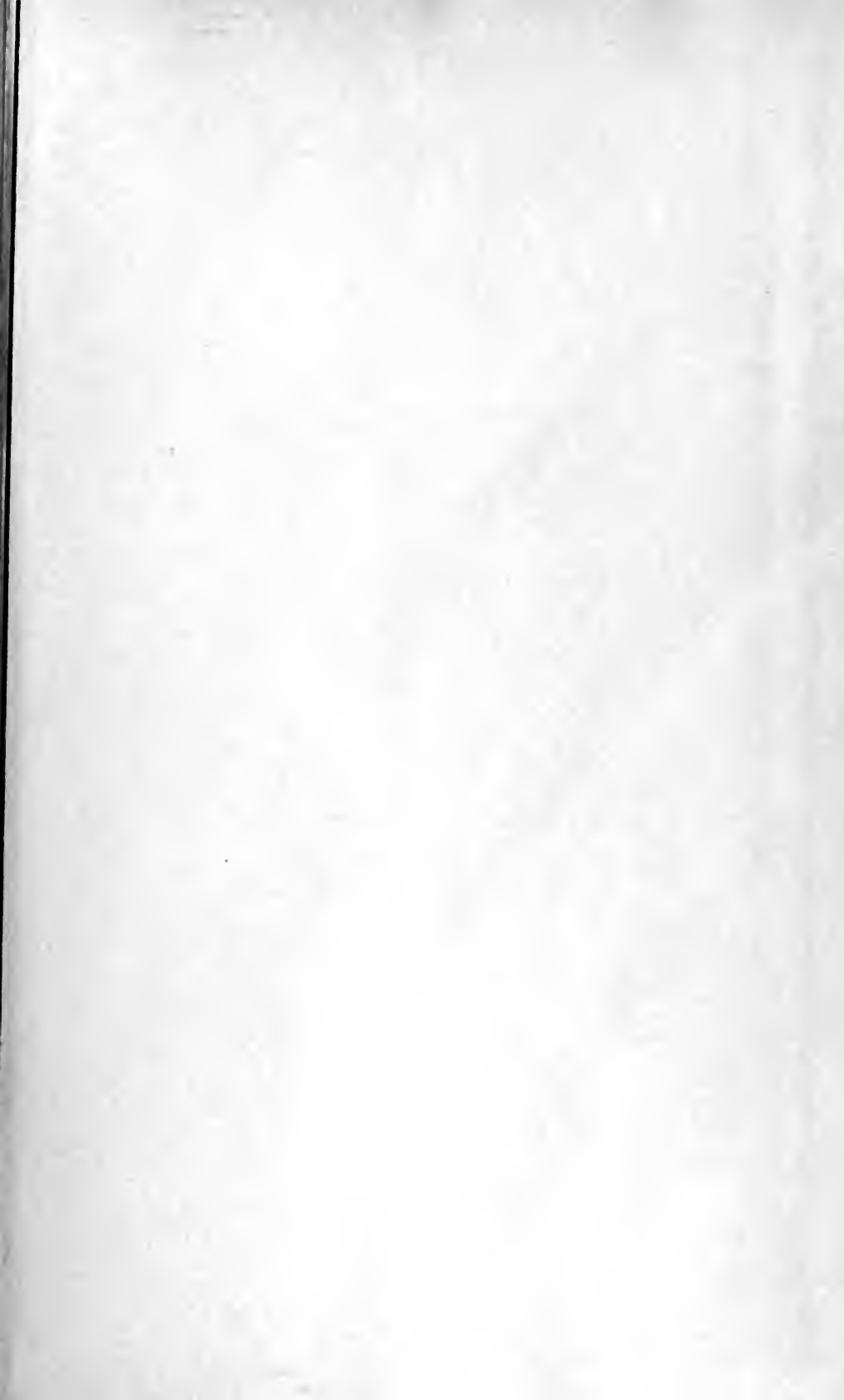
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